

Tony Evers  
Governor



DIVISION OF PUBLIC HEALTH

1 WEST WILSON STREET  
PO BOX 2659  
MADISON WI 53701-2659

Karen E. Timberlake  
Secretary

**State of Wisconsin**  
Department of Health Services

Telephone: 608-266-1251  
Fax: 608-267-2832  
TTY: 711 or 800-947-3529

December 10, 2021

Christopher Tidmarsh  
MuckRock News  
DEPT MR 91889  
411A Highland Ave  
Somerville, MA 02144-2516  
Email: [91889-79891607@requests.muckrock.com](mailto:91889-79891607@requests.muckrock.com)

Re: Your April 18, 2020 public records request, amended on April 20, 2020

Dear Mr. Tidmarsh:

This is a response to your April 18, 2020 public records request, amended on April 20, 2020, requesting the following:

Any and all digital records (including but not limited to emails, text messages, PDF files, social media posts, etc.) concerning a real or potential shortage of COVID-19 testing supplies in Wisconsin and/or an estimated timeline on when said COVID-19 testing supplies are expected to be in sufficient supply to meet the general public's demand for COVID-19 testing to the degree necessary to alleviate the COVID-19 pandemic in Wisconsin. By "COVID-19 testing supplies", I mean any medical supplies necessary for doctors to administer tests to patients either to diagnose the patients with COVID-19 or to determine whether they possess immunity to COVID-19 (such as through antibody tests or any other methods that might be used to test for immunity).

Given the breadth of the request, we searched in the communications of key members of the DHS testing team, using the following keywords: "covid-19 testing", "covid testing", "covid tests", "lab capacity", "shortages", "supply", "PCR", "swabs", "reagent", "State Lab of Hygiene", and "@slh.wisc.edu".

Drafts were withheld as they are not records under Wis. Stat. § 19.32(2).

Records containing protected health information which is protected under the Health Insurance Portability and Accountability Act and Wis. Stat. § 146.82 have been withheld or redacted.

We have redacted personal health information provided by an individual. The public interest in maintaining the privacy of information of this nature is reflected throughout state and federal law. *See e.g.* Wis. Stat. § 146.82(1); 45 CFR Parts 160 and 164 (subparts A & E). In contrast, the public has an interest in accessing emails sent to the Department of Health Services (“Department”) for purposes of influencing policy. *See MacIver v. Erpenbach*, 2014 WI App 49, 354 Wis.2d 61, 848 N.W.2d 862. This redaction balances these two interests, as the public interest in maintaining some privacy over unique personal health information outweighs the public interest in having the information as it relates to the individual reaching out to the Department.

Pursuant to the common law balancing test, efforts were made to redact unpublished cell and office phone numbers of state employees, even those employees who are no longer employed by the state, as these numbers are often repurposed. Making these unpublished numbers available would cause unnecessary and unwarranted interruptions to employees both at work and at home, affecting their ability to work efficiently. There is minimal harm to the public interest given that these same individuals are available through publicly available means, such as office main lines.

Personal information, including personal email addresses of state employees, has also been redacted pursuant to Wis. Stat. § 19.36(10)(a).

Pursuant to the common law balancing test and consistent with Wis. Stat. § 995.50, we made efforts to redact personal email addresses and cell phone numbers of members of the public that contacted the Department or other government partners. Making this information available could subject the individuals to harassing contact and would constitute an invasion of their privacy. The public’s interest in individual privacy outweighs any minimal harm, especially given that no other identifying information has been withheld. The strong public interest in knowing who is contacting the Department or other government partners is not affected by withholding those individuals’ personal email addresses or cell phone numbers.

A group mailbox address used by the National Guard and government officials for communication about responding to COVID-19 have been redacted. Limiting use of the group email box to those responsible for addressing COVID-19 is essential to efficient and effective communication regarding these matters. Widely broadcasting the mailbox runs the risk that the mailbox will be inundated with unrelated emails or emails that are not useful in the response or related to National Guard missions. The address is not necessary to communicate with the National Guard or the government regarding COVID-19 as there are alternative ways to do so. In applying the balancing test, we have determined that the interest in securing the group email box so that they are used only for their intended purpose and to permit effective and efficient communication regarding COVID-19 responses outweighs the public interest in disclosure of such information, particularly because there are alternative means to contact the National Guard and the government.

We redacted conference call phone numbers and passcodes, as well as links to video conference calls. Making those available would cause unnecessary and unwarranted interruptions for employees and could allow unauthorized access to discussions potentially involving

confidential information. Pursuant to the common law balancing test, we have concluded that the public interest in efficient state business functions outweighs any minimal public interest in access to that information.

Records containing the location of state's personal protective equipment (PPE) warehouse for security reasons have been redacted. In applying the balancing test, we concluded that any public interest in the disclosure of this location is outweighed by the public interest in maintaining the security of the location.

Records containing the location and type of certain proprietary laboratory equipment provided by manufacturers to the federal government was withheld. Pursuant to Wis. Stat. §19.36(5), 5 U.S.C. Section 552(b)(4) and the balancing test, we have determined that release of this information is outweighed by the negative impact disclosure could have on the competitive position of these manufacturers in the marketplace.

If you believe that the Department of Health Services has improperly denied records related to your request, please do not hesitate to contact us. Further, if you do so believe, you have a right under Wis. Stat. § 19.37 to have the determination reviewed by *mandamus* or upon application to the Attorney General or a District Attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna Benton". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Anna Benton  
Assistant Administrator

Enclosure