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# With legal fees paid, River News seeks dismissal of open records case

By Jamie Taylor

OF THE RIVER NEWS

A lawyer for the *Northwoods River News* has drafted a stipulated agreement that, if signed by city attorney Carrie Miljevich, would result in the dismissal of a open records lawsuit the newspaper filed against the city in August 2017.

April Rockstead Barker of the law firm Schott, Bublitz & Engel, s.c., has advised she is in receipt of check for \$8,000, the amount the parties agreed the city would pay as part of its obligation to cover the newspaper's legal fees. It's customary in open records cases for the prevailing party to be awarded reasonable attor-

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# Legal Fees

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neys' fees.

The lawsuit was over the city's response to an open records request filed in December 2016 seeking "copies of any and all written records of any complaints, letters or other adverse disciplinary filings against the following city employees: Tim Kingman, public works director; Tony Gilman, street superintendent and Tom Roeser, water utility superintendent."

*The River News* filed the lawsuit August 17, 2017, after the city turned over the records with heavy redactions. In the lawsuit, the newspaper challenged the city's rationale for redacting the records. In July, the city turned over the unredacted records after Barker filed a motion for summary judgement.

A brief filed in support of the summary

judgement motion laid out the back story of the newspaper's request. It started with a discussion in the public works committee that spilled over to the entire City Council in the wake of the dismissal of former city administrator Kristina Aschenbrenner.

Unbeknownst to the council, Aschenbrenner had taken over supervisory authority for Gilman and Roeser from Kingman amidst what was described as "workplace culture issues."

According to the brief in support of the motion, at a December 2016 public works committee meeting, according to a media report "one committee member asserted that having the public works director oversee the water and street divisions had become a 'problem' and complained that 'people are going behind people's backs and doing sneaky stuff.'" Without identifying

anyone by name, she warned that those who were engaging in the behavior needed to "quit the monkey business."

During the committee discussion on the public works issues, then mayor Dick Johns announced he had received "another" complaint letter against Kingman. Johns retired in April while Gilman left the city to take a comparable position with the city of Baraboo.

After a closed door discussion at its Oct. 8 meeting, the City Council agreed to pay \$8,000 to settle the attorneys' fees claim. In response, Barker has drafted a stipulated petition for dismissal of the case.

The newspaper is still reviewing the records as part of a broader investigation into the public works department.

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# City wasted tax dollars in records dispute

As we report in today's edition, this newspaper has resolved its dispute with the city of Rhinelander over public works department disciplinary records requested almost two years ago.

The cost to city taxpayers: \$8,000.

To be sure, taxpayers should not have had to spend one penny on this request. They did so not because the newspaper requested records to which it was not entitled, but because the city refused to hand over records that clearly fall under the state's open records law.

Whether it was a case of ignorance or arrogance, or a bit of both, we're not sure. Either way, city officials wasted thousands of dollars.

That's \$8,000 that could have been used to fix city roads, upgrade the parks or help fund any number of other projects that went instead to the newspaper's attorney for services rendered. This is standard in open records cases as the public records law states that the prevailing party is entitled to an award of reasonable attorneys' fees. The River News was the prevailing party in this dispute because the city had no legal basis to deny access to the unredacted records but chose to do so anyway.

This dispute dates back to the fall of 2016 when various City Council members began referencing dissension in the public works department and implying the turmoil was inhibiting the department's efficiency. Speaking at public meetings, alderpersons made reference to pending disciplinary "complaints" lodged against public works employees, but would stop short of a full explanation.

In an effort to learn more about the impact of the alleged "workplace culture issues" on the department's day-to-day operations, the newspaper filed an open records request in December 2016 seeking "copies of any and all written records of any complaints, letters or other adverse disciplinary filings against the following city employees: Tim Kingman, public works director; Tony Gilman, street superintendent and Tom Roeser, water utility superintendent."

The city eventually turned over some of the records in question but with heavy redactions. According to the city, the names of individuals who submitted complaints and the names of "subordinate employees" were redacted due to public policy considerations.

In August 2017, the newspaper filed a lawsuit in Oneida County Circuit Court challenging the city's rationale for redacting the records. The case languished for months until this summer when, in response to the newspa-

per's motion for summary judgment, the city finally turned over the unredacted records. That move left attorneys' fees as the remaining unresolved issue.

The newspaper's attorney, April Rockstead Barker of the law firm Schott, Publitz & Engel, s.c., filed a bill for fees and allowable expenses totaling \$9,698.37. Her hourly rate was listed at \$350 for the action, according to the filing. Following a closed door discussion earlier this month, the City Council agreed to pay \$8,000 to settle the attorneys' fees claim and last week Barker received the city's check.

The case is now all but closed — Judge Michael Bloom has to officially dismiss it, an action that should take place in the very near future — but we can't help but wonder if any lessons have been learned. City officials rarely miss an opportunity to remind the public of just how tight the budget is. To hear many of them talk, there isn't so much as an extra dime available anywhere. Why then did the alderpersons allow thousands of dollars to fly out the door for no reason?

Records custodians cannot simply make redactions or withhold records because it would be inconvenient for them to be more transparent, to insulate themselves or their employees from the heat of public criticism, because they don't like the requester or just don't feel like following the law.

As our publisher Gregg Walker said after the lawsuit was filed, "The citizens of Rhinelander deserve better representation. The open meetings law and records laws are simple to follow. It's sad we have to go to court for records that the law clearly says are open."

All of this predated the arrival of new city administrator Daniel Guild, who we sincerely hope will do a better job than his predecessors in responding to records requests. To be honest, it would be hard for him to do worse, as the city's current strategy when it comes to records requests appears to be stall and deny.

We understand that identifying records responsive to a particular request can be time-consuming and city officials must do their due diligence before handing over potentially sensitive documents, but all of these things are, in fact, part of the job the public is paying them to do. It doesn't matter if a newspaper makes a records request or if an individual citizen does so, the city is required to respond in a timely manner and release all records responsive to the request.

It's just that simple.