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CIRCUIT COURT
DANE COUNTY, WI
2017CV000291

BY THE COURT:

DATE SIGNED: June 13, 2019

Electronically signed by Rhonda L. Lanford
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 16 DANE COUNTY

STATE ex rel. KEVIN WYMORE,

Plaintiff,

v.

Case No.: 17 CV 0291

OVERSIGHT AND ADVISORY COMMITTEE,

Defendant.

DECISION AND ORDER

Defendant, Oversight and Advisory Committee (OAC), filed a summary judgment motion asking this Court to dismiss Plaintiff's public records mandamus and open meetings complaint. Defendant argues it properly denied plaintiff's open records request for peer review comments because releasing the comments would negatively impact the OAC's ability to help Wisconsin's underserved communities. Meanwhile, plaintiff,

Kevin Wymore, filed a cross summary judgment motion asking this court to order OAC to produce the requested records. Plaintiff argues the justifications given by OAC for non-disclosure do not outweigh the strong public interest in disclosure. Based upon the record and the briefs, and for the reasons stated below, OAC's motion is DENIED and Wymore's motion is GRANTED.

FACTS

I. OAC's Creation and Purpose

In 1999, Blue Cross Blue Shield United of Wisconsin, Inc. (BCBS) petitioned the Office of Commissioner of Insurance (OCI) to permit it to convert from a non-profit corporation to a for-profit corporation. In order to convert to a for-profit corporation, BCBS had to compensate the state for the decades of tax-exempt status it enjoyed, and proposed to do so by giving stock to a foundation, which in turn would sell it and distribute the proceeds to the state's two medical schools: the University of Wisconsin Medical School and the Medical College of Wisconsin. The funds would be used to promote public health initiatives. The OCI required modifications to establish accountability mechanisms for, and public participation in the governance of, the conversion funds. Among the accountability requirements was that each medical school must create a public and community health oversight and advisory committee to oversee the distribution of the public health-allocated percentage of conversion funds. The OCI

required the committees to conduct themselves in accordance with standards consistent with the Wisconsin public meeting and public record laws.

The Oversight and Advisory Committee (OAC) is the University of Wisconsin School of Medicine and Public Health's designated committee to distribute the 35% public health funds associated with the BCBS conversion. The OAC is one of two governance committees that administer the Wisconsin Partnership Program's (WPP) five grant programs that seek to improve the health and well-being of Wisconsin residents. A different committee, the Partnership Education Research Committee (PERC), administers and oversees the research grants. Andrea Dearlove is the Senior Program Officer for WPP. With her staff and the OAC's director Eileen Smith, she designed an awards program, known as the Community Impact Grant, to incorporate experience from previous WPP community academic grant programs as well as nationwide best practices to address complex public health issues.

II. Community Impact Grant

The Community Impact Grant, a five-year, one-million-dollar grant, focuses on developing collaborative relationships between community organizations and academic partners to address the root causes of poor health and health disparities. Community Impact Grant recipients are encouraged to design initiatives that will take best practices and embed them into existing policies and systems. For example, if a recipient sought to combat childhood obesity, it might work with the Department of Public Instruction to institute healthier school lunch policy, rather than simply teaching children about proper

nutrition. In November of 2015, the OAC awarded Community Impact Grants to develop and support a network of school gardens throughout Wisconsin, improve the quality of assisted living, effect change in the criminal justice system to improve health of incarcerated persons and their families, and advance school-based mental health programs.

Three people are assigned to review a submitted grant application: one OAC member, one university faculty or academic staff with expertise, and one community representative. Reviewers submit comments by answering questions on established criteria from the Request for Proposals (RFP) and score the proposal on a scale from 0 to 100. These scores are averaged to determine a stage one ranking. OAC members who are lead reviewers receive a de-identified compilation of the comments so they may report the strengths and weaknesses of the application to the full committee at the stage one meeting. At this meeting, the Committee decides which applicants advance to stage two. Those that advance to stage two prepare a limited PowerPoint presentation to the OAC and file a response document addressing the comments and questions raised during the stage one review process, which becomes part of the proposal. Between the presentations, the OAC members discuss the proposals and rank the applicants. Those applicants chosen to move to stage three work with WPP staff on the final details, such as budget and human subject applications. During the November OAC meeting, which is public, the OAC votes on which projects to fund.

III. OAC 2016 Meetings and Wymore's Open Records Request

On September 21, 2016, the OAC met to review the stage two Community Impact Grant proposals. Each of the six applicants made a presentation to the OAC and was interviewed. OAC members then scored the applications and committee staff compiled the scores. The charts containing the scores were displayed on a screen in the meeting room for all to see, where several non-OAC members were present, including Mr. Wymore. The charts were not redacted. The OAC ultimately voted to advance three applications to stage three. The three proposals that went on to stage three had a pre stage two ranking of 91, 90, and 86 while the proposals that did not advance had pre stage two rankings of 91, 91, and 85. Two of the proposals that advanced to stage three, with scores of 90 and 86, were associated with OAC members who removed themselves from voting due to a conflict of interest.

Shortly before the OAC meeting on September 21, 2016, Mr. Wymore emailed an open records request with the OAC for "the entire meeting agenda packet as given to the [OAC] members for the September 21, 2016, meeting. This request specifically includes reviewer comments and reviewer notes in connection with the grant evaluation process." Wymore was provided some documents at the meeting, provided other documents via letter dated November 28, 2016, and denied access to other documents via that same letter. Specifically, Wymore was given a document showing grant-review rankings, with the rankings redacted, and was denied access to reviewer notes. The OAC denied

Wymore's request for unredacted draft rankings and scores and reviewer's notes as stated in the OAC's denial letter:

> **Draft Rankings and Scores.** The University has redacted the rankings and scores reflected on these documents for multiple reasons. The first is that the University believes these rankings and score documents are currently drafts, and are therefore not records under the law. Wis. Stat. sec. 19.32(2). These rankings and scores are being considered, reconsidered, and revised, as part of the currently ongoing process of awarding these grants.
>
> Additionally, and to the extent that any rankings or scores are not drafts, we have applied the balancing test inherent in the Wisconsin public records law and made the determination that the public interest in withholding the rankings and scores of proposals being evaluated by the OAC committee at this point in the process, is greater than the public interest in release of this information. The public has an interest in a full and robust evaluation process that leads to the best proposals being funded, and that interest could be harmed by premature release. The rankings and scores are a snapshot in time which are subject to change before the committee makes its final funding decisions. The process of evaluating these submissions is not over, and to release information such as scores and rankings of submissions at this point of the evaluation process could lead to false assumptions or conclusions on the part of those consuming this information. While the public may have an interest in the final information, it is best served by release of the information at the appropriate time, when the process is final.
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> **Reviewer Comments.** You also requested "reviewer comments and reviewer notes in connection with the grant evaluation process." The University denies this portion of your request in its entirety under the balancing test. The public has an interest in the highest quality proposals being funded by the WPP. This necessitates highly qualified reviewers. High quality reviewers are necessary to accurately assess the value of the proposals and select the most innovative and worthy for funding who may decline to participate if their comments or notes were to be made public.
>
> There is a concern that reviewers will not be completely honest in their reviews if those reviews are made public. The WPP grant award process relies on reviewers to provide unvarnished, truthful, and potentially critical comments on proposals in order to assess the value of each proposal. Unbiased, critical review of grant proposals requires that the identities of specific reviewers of individual applications not be disclosed outside of the review process so that those reviewers do not feel pressured, and are not

> pressured by any outside force to sanitize or curtail their review in any way. Release may undermine the value and the quality of programs funded if applications are not evaluated in an unbiased manner.

On November 16, 2016, the OAC convened to consider a number of agenda items, including the final selection of recipients of Community Impact Fund grants. The notice for the meeting included as its tenth agenda item: "Adjourn to Closed Session pursuant to Wisconsin Statute sec. 19.85(1)(g), conferring with legal counsel. The meeting is not expected to return to open session." This was the first closed-session meeting that the OAC had held all year.

On December 22, 2016, Wymore filed a verified complaint with District Attorney Ismael Ozanne asserting that the OAC violated the open meetings and public records laws. Prior to filing his verified complaint, Mr. Wymore had not directly threatened litigation to anyone associated with the OAC. On February 7, 2017, with the District Attorney taking no action to prosecute this matter, Mr. Wymore filed this complaint. On February 13, 2017, the University's legal counsel provided DA Ozanne and Wymore's attorney with an un-redacted copy of the ranking document.

STANDARD OF REVIEW

Mandamus is a proper means by which to challenge the denial of a public records request. *State ex rel. Greer v. Stahowiak*, 2005 WI App 219, ¶ 7. In order to obtain a writ of mandamus compelling disclosure, petitioner must show: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus

was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8.

The purpose of summary judgment is to prevent having trials where there is nothing to try. *Yahnke v. Carson*, 2000 WI 74, ¶ 10. The judgment sought shall be granted if the pleadings show "there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law". Wis. Stat. §802.08(2). When deciding a motion for summary judgment the court must first examine the pleadings to determine if a claim for relief has been stated and whether the answer creates a genuine issue of material fact. *Trinity Evangelical Lutheran Church and School-Friedstadt v. Tower*, 2003 WI 46 ¶¶ 31-32. Next, the court must establish whether the moving party has made a prima facie case for summary judgment through affidavits and other proof. *See Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473, 476-77 (1980). To show a prima facie case, the moving party must "establish a record sufficient to demonstrate ... that there is no triable issue of material fact on any issue presented." *Heck & Paetow Claim Serv., Inc. v. Heck*, 93 Wis. 2d 349, 356 (1980). If a prima facie case is made, the court examines the submissions of the other party to determine if there is a disputed issue of material fact or if alternative reasonable inferences could be drawn from the facts. *Trinity*, 2003 WI 46 ¶¶ 31-32. The opposing party "may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial." *Board of Regents v. Mussallem*, 94 Wis. 2d 657, 673 (1980). Summary judgment shall be

granted when there are no material facts in dispute or no alternative reasonable inferences can be drawn from the facts. *MacDonald v. Town of Dover*, 2017 WI 79 ¶ 1.

DECISION

I. OPEN RECORDS CLAIM.

Wisconsin's public records law states, "[e]xcept as otherwise provided by law, any requester has a right to inspect any record." Wis. Stat. § 19.35(1)(a). The public records law's declaration of policy mandates that the statutes "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." Wis. Stat. § 19.31. "This statement of public policy . . . is one of the strongest declarations of policy to be found in the Wisconsin statutes." *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, ¶ 49. The presumption of openness may give way to a statutory exception, a limitation under common law, or an overriding public interest in keeping the record confidential. *Tratz v. Zunker*, 201 Wis. 2d 774, 778 (Ct. App. 1996). It is against this backdrop that the court reviews OAC's reasons for denying Wymore's request.

There is a two-step process for analyzing whether a custodian's denial of access to public records can be sustained. First, the court must determine whether the denial was made with the appropriate level of specificity. *Portage Daily Register v. Columbia Cty. Sheriff's Dep't*, 2008 WI App 30, ¶ 12. In order to meet the specificity requirement, the

custodian must provide specific public policy reasons why the record must be withheld as mere legal conclusions are insufficient. *Mayfair Chrysler–Plymouth, Inc. v. Baldarotta*, 154 Wis. 2d 793, 798 (Ct. App. 1990). However, the custodian need not provide a detailed analysis. *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 823 (Ct. App. 1988). If the reasons given for denial are deemed appropriately specific, the court then must determine whether the reasons for withholding the requested records outweigh the strong public policy in favor of disclosure. *Portage*, 2008 WI App at ¶ 12. The balancing test considers "whether disclosure would cause public harm to the degree that the presumption of openness of public records is overcome." *Madison Teachers, Inc. v. Scott*, 2018 WI 11, ¶ 20. "When courts balance the public interest in disclosure against the public interest in non-disclosure, generally there will be no 'blanket exceptions from release.' Accordingly, the balancing test must be applied with respect to each individual record." *Milwaukee Journal Sentinel v. DOA*, 2009 WI 79, ¶ 56. However, where a category of records is sought it is appropriate to review the public policy reasons as they apply to the records in general. *See Village of Butler v. Cohen*, 163 Wis. 2d 819, 827 (Ct. App. 1991).

The court must first determine whether OAC's denial was appropriately specific. In denying records of the scores, the OAC said the interest in non-disclosure outweighed the interest in disclosure because releasing premature scoring information would lead to false assumptions or conclusions. In reference to the reviewer comments, the OAC cited the need for quality unbiased reviewers, the concern that reviewers will not offer critical comments if their names were released, and the risk that programs will suffer if not

reviewed by the most qualified reviewers, as justification for its denial. Neither side argues that these reasons were not specific enough. The Court agrees that the denial letter lists specific policy reasons for the denial. Thus, the reasons listed in OAC's denial meet the specificity requirement.

The question is whether the additional reasons offered in OAC's brief should be considered. OAC's experts offered their opinions that being forced to release reviewers notes and grant scores could hurt a grant organizations ability to recruit top recruiters, harm the reviewers if their names were associated with the review, lead to less candid and less helpful reviewer comments, lead to publicly shaming good scientists, lead to misappropriation of the grant seeker's ideas, harm the chances of a grant proposal being funded in the future due to negative reviewer comments, and possibly slow the process of science. Wymore argues that the additional reasons should not be considered by this court because they were not listed in the OAC's initial denial, while OAC argues the justifications cited in their brief are merely extensions of the reasons they initially gave in their response.

The additional justifications listed in OAC's brief are more detailed extensions of the reasons given in their initial denial so it is appropriate to consider those justifications in the balancing test. The additional concerns identified by the experts that release of reviewers notes could lead to the public shaming of good scientists, lead to the misappropriation of grant seeker's ideas, harm the chances of a grant proposal being funded, and slow the scientific process are all covered when the denial letter talks about the importance of "unvarnished, truthful, and potentially critical comments on

proposals." Reviewers may not be as critical for fear of shaming the grant seeker or hurting the grant seeker's ability to get another grant in the future. Reviewers may not give unvarnished comments for fear that the grant seeker's ideas will be stolen. The lack of critical and specific reviewer comments could have the net effect of slowing down the scientific process because grant seekers would get less helpful feedback on their proposals. OAC identified the public policy need for unvarnished, critical, and truthful review comments and the experts merely explained why that was so important and why they believed it would be hindered by the public release of reviewer comments. There is no requirement that the custodian give facts supporting its reasons for denial or provide an in-depth analysis of why the negative policy outcomes would occur; all that is required is the identification of specific policy reasons. However, "factual support for the custodian's reasoning is likely to strengthen the custodian's case before a circuit court." *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 79. Because OAC identified specific public policy reasons and expanded upon their reasoning by providing factual support, both will be considered when applying the balancing test.

The next inquiry is whether the reasons given are sufficient to outweigh the strong public policy favoring disclosure. Again, the public policy justifications offered by OAC are the need to maintain high quality reviewers, the need for critical and specific comments, and the need to maintain program quality. The competing interests are the general policy of full public disclosure as well as the public's right to understand and evaluate the government's use of resources. The presumption in favor of public disclosure is particularly strong in this case because the funds for the grant are the result

of the BCBS conversion, which are specially earmarked to support public health initiatives. Each stated public policy reason will be examined in turn.

There is no Wisconsin case law that is applicable to the question before the Court, although OAC points to some outside jurisdiction cases as persuasive authority in support of its argument that peer review comments should be confidential. *See, Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wash. 2d 243, 256–57 (1994); *Highland Min. Co. v. W. Virginia Univ. Sch. of Med.*, 235 W. Va. 370, 388 (2015); *Chem. Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*, 600 F. Supp. 114 (D.D.C. 1984). However, the cases referenced by OAC will not be considered as persuasive authority because each one relies on a specific statutory exception as the basis for its decision. Thus, they are inapposite because there is no applicable Wisconsin statutory exception. This Court is performing a balancing test.

OAC first argues that reviewer comments should not be disclosed because if reviewers knew their comments would be made public, they would be less likely to review the proposals out of fear of being retaliated against. This is a legitimate concern since peer review is an essential part of any grant process. However, this concern can be addressed by redacting the names of the reviewers. OAC argues that a simple redaction of the expert's name is insufficient as they may still be identified. OAC argues that because of how small the scientific communities are it is possible that the reviewers can still be identified based on their writing style or their particular expertise. OAC overstates the likelihood that an anonymous reviewer could be identified. The reviewer comments are relatively short so there is not much chance the writers writing style will be readily

discernible. More importantly, the grant seeker is already provided de-identified versions of the reviewer comments. If anyone were to retaliate or hold a grudge over reviewer comments on a grant proposal, it would be the grant seeker. Furthermore, the grant seeker is probably in the best position to identify the reviewer based on their expertise or writing style since they work in the same arena. Despite this fact, OAC willingly allows the grant seeker to receive a copy of a de-identified version of the reviewer comments and there is no evidence that any reviewers have an issue with the practice or have ever been retaliated against. There is no evidence that releasing de-identified comments to the public would increase the likelihood of a reviewer being identified; even if there were a possibility that the reviewer is identified, this is certainly not significant enough to outweigh the public interest in disclosure.

OAC's next argument is that public disclosure of reviewer comments will result in less candid and therefore less helpful comments. OAC lists a number of reasons why this would be the case including: the fear of disclosing proprietary information, the fear of making the grant seeker look bad, and the fear of hurting a promising proposal's chances of getting further grant funding. None of these reasons are substantial enough to overcome the public's interest in oversight of the grant funding. The fear of disclosing proprietary information is not as significant as OAC claims. Throughout its briefs, OAC refers to procedures followed by other grant organizations, specifically the National Institutes of Health (NIH), to support its position that review comments should be kept confidential. However, every grant program it references focuses on research grants. OAC grants are applied public health grants, not research grants. Thus, the likelihood of

divulging proprietary information is far less substantial. A previous winner of the Community Impact Grant was a proposal to develop and support a network of school gardens throughout Wisconsin. While the plans for how to develop school gardens may be unique, the plans are less likely to be divulged in a reviewer comment than the chemical makeup of a new drug strain. The remote possibility that someone would improperly benefit from published reviewer comments about a public health grant application cannot outweigh the public interest in disclosure.

OAC's concern that grant seekers will be humiliated in public or prevented from receiving future grants is also overstated. The reviewer comments are meant to be critical yet constructive. They are not particularly harsh and so it seems unlikely they could be used to seriously harm a grant seeker's reputation. OAC submitted affidavits of experts explaining that certain grant applications take multiple years before they get funded. This evidence directly contradicts the contention that publicizing reviewer comments could prevent a grant seeker from getting future grants since it is common knowledge in the community that the grant process can be lengthy. Additionally, OAC grant applicants are publicly voted on which means the public is already aware of whether a proposal is successful or not. The reviewer comments are just as likely to help a grant seeker as hurt them because it could offer a better explanation about why the proposal was not picked.

The justifications supplied by OAC are not strong enough to outweigh the particularly strong interest in public disclosure in this case. Due to the history and purpose of the funds, there is an exceptionally strong public interest in ensuring the funds are being put towards their intended purpose. Public disclosure will better allow the

public to assess whether the correct proposals are being funded and ensure there are no improper conflicts. In this grant cycle alone, OAC funded two projects that were not as highly rated as others, and those two projects were associated with OAC committee members. Release of reviewer comments can help counteract any suggestions of improper bias or favoritism. Alternatively, if bias does exist, releasing reviewer comments will help ensure proper procedures are followed in the future. Either way, the release of reviewer comments will ensure proper public oversight of public funds and help legitimize the OAC grant funding process.

In summary, the combination of OAC's public policy reasons supporting non-disclosure are insufficient to override the public's interest in disclosure. However, the names of the reviewer comments must be redacted as the public interest in disclosure in a reviewer's identity is outweighed by the potential chilling effect it would have on the grant review process. Based on this ruling it is unnecessary to examine whether Wymore has substantially prevailed as to the production of the score sheets as he will receive costs and attorney fees either way.

II. OPEN MEETINGS CLAIM.

The Open Meetings Law states "[e]very public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). When the meeting occurs in closed session, the notice

must also identify which provision of the Open Meetings Law allows the closed session. Wis. Stat. § 19.85(1). As the Attorney General's office has noted "[m]erely identifying and quoting from a statutory exemption does not reasonably identify any particular subject that might be taken up thereunder and thus is not adequate notice of a closed session." Wis. Dep't of Justice, *Open Meetings Compliance Guide* at 17 (Nov. 2015). The Supreme Court has held that whether notice is sufficient depends on what is reasonable under the circumstances based on factors like "[the] burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves nonroutine action that the public would be unlikely to anticipate." *State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, ¶¶ 22, 28.

Wymore contends that the closed meeting held by the OAC on November 16, 2016, was improperly noticed. OAC's notice was as follows, "Adjourn to Closed Session pursuant to Wisconsin Statute sec. 19.85(1)(g), conferring with legal counsel. The meeting is not expected to return to open session." OAC argues the notice was sufficient under the circumstances because providing any more information would have informed the public of their fear that they were about to be sued and it is improper to force them to announce that they anticipated litigation. However, when using the standards set out in *Buswell,* it is clear that OAC's notice was insufficient.

It would not have been significantly more burdensome for OAC to provide a more detailed notice. While the OAC did not have to declare that it was anticipating being sued for denial of an open records request by Mr. Wymore, it had to provide more information than "conferring with legal counsel." The statutory exemption cited by OAC is for

"[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved." Wis. Stat. § 19.85(1)(g). OAC's explanation of "conferring with legal counsel" are the first four words of the statutory exception they referenced. OAC merely quoted the statutory section while providing no notice of the subject matter therein, a practice specifically deemed insufficient by the Attorney General. OAC must include more detail in their notice, even when anticipating litigation. The other two factors also point to the insufficiency of the notice. The public has a strong interest in OAC meetings because of the emphasis placed on public involvement over the BCBS conversion funds. Additionally, the public was unable to anticipate the subject matter of the meeting because OAC does not typically go into closed session and Wymore's open records request had not even been denied yet. Thus, the OAC's closed meeting was improperly noticed.

Wymore also contends the closed meeting session was improperly held because the statutory exception identified by OAC can only be invoked with respect to "litigation in which it is or is likely to become involved." Wis. Stat. § 19.85(1)(g). Wymore argues OAC could not have known it was likely to become involved in litigation because his open records request had not been denied yet and he had not threatened litigation. Meanwhile, OAC contends it was likely to become involved in litigation based on its knowledge that it was going to reject Wymore's open records request and the litigious nature in which Wymore was conducting himself. This question is a factual one

inappropriate for summary judgment. However, it is moot because it does not change the remedies available to either party.

Wymore also asks the court to consider whether OAC acted in a manner that would allow punitive damages to be assessed against it. Because Wymore did not fully brief this issue but rather included it only as a short paragraph in his remedy requests it will not be addressed here. It is not the duty of the Court to expand upon a party's brief. On this record, there is no evidence that OAC acted in an arbitrary or capricious manner.

ORDER

Based on the reasons set forth above, OAC's motion for summary judgment is DENIED, and Wymore's motion for summary judgment is GRANTED.

IT IS HEREBY ORDERED THAT:

1. OAC shall provide Wymore with copies of the reviewer comments, with the reviewer's names redacted.
2. OAC shall pay Wymore's actual and necessary costs of prosecution, including reasonable attorney fees and costs and damages of not less than $100 pursuant to Wis. Stats. §§ 19.37(2)(b) and (3).