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NEWS

Green Bay Police Department gave Rep. Shae Sortwell advance notice of newspaper's investigation

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GREEN BAY – The Green Bay Police Department gave a state legislator over two weeks' notice that it planned to release a report alleging he abused his child and then let him add a statement to the documents, a special privilege that may have been improper.

“You and I don’t get advanced notice that the police are going to release a police report on us,” said Bill Lueders, president of the Wisconsin Freedom of Information Council and editor of The Progressive.

In response to a public records request from the Green Bay Press-Gazette, the Police Department gave Rep. Shae Sortwell, R-Gibson, 13 business days to add his response to a 2013 report in which officers recommended he be charged with felony child abuse. Police withheld the record until Sortwell added a statement in which he blamed the abuse allegations on a "disgruntled family member."

The Police Department also allowed the Brown County District Attorney's Office to add statements to the original police file on Sortwell in September, to explain why it didn't charge him with a crime, before releasing the documents to the Press-Gazette.

Sortwell was accused of abuse before he was elected to the state Assembly, where he now sits on the Criminal Justice and Public Safety Committee and can influence state laws on crimes including child abuse.

Lisa Wachowski, the Green Bay Police Department's office manager, said informing public officials like Sortwell that they are the subject of open records requests is "by statute."

“Any time when there’s an elected official with an open records request, we have to notify them and they get the opportunity to supplement the records request,” Wachowski said.

“That happens every time we get a records request like that.”

However, the statute to which Wachowski referred was not relevant for Sortwell, based on a 2018 opinion from the Wisconsin Department of Justice. The attorney general wrote that only someone who was a public official or public employee at the time the record was created is required to get advance notice that the document would be released.

Sortwell was neither a public official nor a public employee in January 2013, when police concluded that he left a series of bruises on his child and referred him for a felony charge. Had he been charged and convicted, Sortwell could have faced up to six years in prison.

Assistant Attorney General Paul Ferguson cited the 2018 opinion on Tuesday when he told the Press-Gazette there are narrow circumstances that allow public employees and elected officials to get notice and add their comments to documents before they're made public.

Sortwell was a public official in 2010, when he served on Green Bay City Council, but he left one year into his two-year term to work for former state Rep. Chad Weininger as a legislative aide. Weininger is now the Brown County director of administration.

Sortwell did not become a public official again until 2018, when he was elected to the Assembly.

The newspaper requested the police report on Aug. 31. On Sept. 14, the Police Department told the Press-Gazette it was notifying Sortwell of the request and giving him a chance to add his statement. The department released the police report and Sortwell's statement on Sept. 30, a day after it received a written statement from Sortwell.

Lueders said the whole thing smacked of favoritism.

"There is nothing in the law that would prohibit the Police Department from giving notice to the individual and allowing him to supplement the record with a statement. But there is nothing in the law that requires it either," Lueders said. "If they did it, it was something of a favor to him."

Tom Kamernick, founder and president of the Wisconsin Transparency Project, said the release of the records shouldn't have been delayed to give notice to the lawmaker and allow him time to issue a statement.

“It is something that, in my opinion, should go out at the same time the records go out,” he said. “They should not be waiting for anything to happen before they send the records.”

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State law says when a citizen requests records, the documents must be released "as soon as practicable and without delay."

These types of laws have been integral at the state and federal level since 1966, when former President Lyndon Johnson gave the green light to the public to access information from any federal agency. This law is commonly known as the Freedom of Information Act, or FOIA.

Michael Conway, a retired lawyer who specializes in First Amendment law and lectures on media and law at Northwestern University, said the release of documents gives people an understanding of the history of events. It's part of the reason there's often "bureaucratic resistance" involved in their release.

But a far worse problem than delaying documents, in Conway's mind, is the manner with which Sortwell could influence the documents. One of the first pages of the 35-page document released by the Green Bay Police Department is a letter from Sortwell calling the family member who reported the child abuse "disgruntled."

For Conway, this is akin to "planting evidence," since the letter was included ahead of the documents being released to the Press-Gazette.

"It would be extremely inappropriate for someone to delete something from the file," Conway said. "So why is it appropriate to add something to the file that is not the historical file?"

'Woznicki' fix incorrectly applied

It was inappropriate for police to allow Sortwell so many days to craft a statement when allegations against him were about to be released, Lueders said. In doing so, the Police Department misinterpreted what has become known as the "Woznicki fix."

That's a reference to a Wisconsin Supreme Court case from 2003 that gave public employees who are the subject of an open records request the right to challenge the release of the documents.

The man behind the term, Thomas Woznicki, was a teacher who had a sexual relationship with a minor. After a school district requested a record related to Woznicki's past dalliances, he claimed that his private personnel records cannot be released to the public without his approval.

The Supreme Court ruled that an employer can't release documents about a current or former employee without informing the employee of the request and giving them an opportunity to sue to block them from becoming public.

Sortwell has never been an employee of the Police Department, which created the record, so the Woznicki fix would not apply.

If Sortwell had been investigated by the state Legislature — his employer — for some type of misconduct, that would be different, Lueders said, but that isn't what happened here.

The law, in other words, was broadly interpreted for Sortwell's case.

“This was not a disciplinary investigation conducted by a state agency or a local governmental agency of a public employee,” Lueders said. “It was a criminal investigation of a citizen.”

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