

## **Alwyn Foster Complaint Filed under SPASD Policy BDDI**

### **BACKGROUND SUMMARY/HISTORY OF ACTIONS AND LACK OF ACTIONS LEADING TO THE COMPLAINT**

**July 30, 2021**

SPASD resident John Welke makes a Public Records request (PRR-1) pursuant to Wis. Stats 19.31-19.39 for public records held on personal electronic devices and on personal email accounts by Board Member Alwyn Foster. This was based on a comment made by Foster in an open session school board meeting regarding questions that were texted to him. The school district does not issue board members mobile telephones.

**August 3, 2021**

Having no response to Welke's PRR-1, Welke send a reminder to Superintendent Saron and Mr. Foster reiterating Welke's request on June 30, 2021 and requesting acknowledgment of the request. Welke include the Wisconsin DOJ Public Records Law Compliance Guide as a reference. Board President Schroeder responds to this reminder and sends an email confirmation of Welke's original request.

**August 9, 2021**

Welke receives an email response from Mr. Foster stating: *"I received your emails. I do not do any school business from my [REDACTED] it was used for campaign related purposes primarily. I will get you the information you requested in regards to text messages. Thank you for your participation with the community and school district."*

**August 23, 2021**

In an email record between Foster and Tracy Frank (attached) on Foster's SPASD email account, Frank states in part: *"I will try and ask some more questions too. Sorry I accidentally used your life church email address on that email."* This record was received in response to a PRR to the District.

**August 24, 2021**

16 working days after my initial records request Welke send an email reminder to Mr. Foster which stated: *"I am writing today to follow up on my public records request dated July 30, 2021. The Wisconsin Department of Justice (DOJ) guideline is that 10 working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records. The DOJ has also indicated that requests for public records should be given high*

## **Alwyn Foster Complaint Filed under SPASD Policy BDDI**

*priority. It has now been 16 working days since I submitted this request and all I have received back from you is an acknowledgment of the initial request. As such, please respond to this email to let me know when the records responsive to my request will be available. To avoid any misunderstandings, I will consider my request denied if no response is received by Friday August 27, 2021 and will seek all available legal relief to obtain the records requested. If you have any questions related to this request please feel free to contact me."*

**August 27, 2021**

Receiving no response to Welke's initial PRR or reminders (19 working days after my initial request) Welke sends Mr. Foster a *Notice of Intent to File a Lawsuit* to compel production of the requested records

**September 7, 2021**

Now 24 working days later, hearing nothing back from Mr. Foster, Welke requests a meeting with Foster, President Schroeder and Superintendent Saron to resolve the issue short of a formal lawsuit. Welke attaches, for a second time, the DOJ compliance guide.

**September 7, 2021**

Mr. Foster sends Welke an email indicating Foster is willing to meet with Welke. Welke responds with schedule availability and request that Foster bring all records responsive to the PRR to the meeting so that they can inspected and copied.

September 9, 2021

Foster responds that his only availability is Thursday mornings from 10-12. Welke accepts that date and time and request a meeting at the DO. Foster responds by stating he'll set up a Zoom Meeting. Welke indicate that Welke wants to meet in person to resolve the request. Welke further explains the following in an email:

- *I have made a lawful request for records from you that are subject to WI Public Records law. There is no need for a ZOOM meeting at this point since that will not allow unfettered access to the records requested.*
- *There is reliable information available that would suggest that you are conducting school district business on one or more of your personal devices or personal accounts.*
- *Based on info from the DO, you are the records custodian for any school district records that you hold on personal accounts/personal devices.*
- *The original request made is over 30 days old and you have not provided me with records responsive to my request or an estimated time that those records might reasonably be available for inspection and copying.*

## **Alwyn Foster Complaint Filed under SPASD Policy BDDI**

- *Multiple WI Attorney's General, through case law and legal opinion, have determined that a reasonable response time for the records outlined in #3 above is 10 working days. It is way past that time now.*
- *The only reason I will meet with you is for inspection and copying of records.*
- *I am trying to resolve this matter at the lowest level possible but your lack of cooperation is making it difficult.*
- *Please make time for us to meet in person next week so that I can inspect and copy the records you possess that are responsive to my request. My schedule is open and flexible so just set up a room at the DO and I will be there to inspect and copy the records requested.*

### **September 13, 2021**

Welke submits a PRR to SPASD seeking records from Fosters SPASD email account.

### **September 14, 2021**

5 days later Foster responds and agrees to meet on Thursday September 16<sup>th</sup> at the DO.

### **September 16, 2021**

Foster, Welke and Attorney Tierney meet and Foster supplies Welke with 3 text message records. Foster describes each record provided but does not provide the "questions" that Foster verbally referenced at the July 26, 2021 Zoom Meeting.

Later that day, Welke sends a summary email to Foster as a follow up and to ensure that Welke clearly understands the verbal information provided which was associated with the text message records. **To date no response to this request has been received.**

Welke also clarifies and reiterates the PRR first submitted on July 26, 2021 to ensure that Foster understands that Welke wants the list of questions sent to Foster by Tracy Frank. This PRR was also made verbally to Foster and Tierney during their in-person meeting. **To date Foster has not acknowledged this PRR or produced the record(s) responsive to the request.**

Welke also makes a new PRR for Fosters detailed monthly billing statement for his personal mobile phone. **To date Foster has not acknowledged this PRR or produced the record(s) responsive to the request.**

### **September 22, 2021**

Because confirmation of the PRR requests on September 16, 2021 had not been received, Welke sends Foster a reminder e-mail

## Alwyn Foster Complaint Filed under SPASD Policy BDDI

September 29, 2021

SPASD provides records responsive to Welke's September 13, 2021 request

September 30, 2021

Because confirmation of the PRR requests on September 16, 2021 had not been received, Welke sends Foster an e-mail and advising Foster that Welke will be filing a complaint against Foster as a sitting Board Member under SPASD Policy BDDI. Welke stresses that he would like to resolve the matter at the lowest possible level but Foster's unresponsiveness has left Welke no other choice but to pursue compliance in that manner.

Welke also submits another PRR for school district records he possesses on his Life Church Dane County email. This was based on an email record received from SPASD and held on his SPASD email account from Tracy Frank referencing a list sent to that email address. The PRR also includes and school district text messages on his Life Church mobile phone.

October 12, 2021

Because no confirmation of the PRR's from September 16<sup>th</sup>, September 30, 2021 and an incomplete response to the July 30, 2021 PRR, Welke files a complaint with School Board President Steve Schroeder.

October 24, 2021

Welke reviews in more detail the records responsive to the PRR to SPASD and notes the following:

- Foster is responsive to emails received from Tracy Frank, Nehemirah Barrett, Teran Peterson, Michael Morgan, Devon Larosa and Jeff Tubbs. With the exception of Michael Morgan all of these emails are from/to individual community members and are NOT SPASD employees.
- Foster is minimally responsive to some emails received from John Welke. The majority of emails and requests go unanswered.
- In an email exchange on or about August 19-23, 2021 between Foster and Tracy Frank [REDACTED] Frank states that she is "sorry" she sent an apparent school district business email to Foster's "life church email address". In the CC portion of the email header it appears that the email Frank is referencing is [REDACTED]
- In an email string between Teran Peterson, Michael Morgan and Foster on or about July 6-15, 2021, Foster uses a gmail account [REDACTED] to communicate. Ironically it appears that Peterson is trying to set up a meeting about "equity" and states in part in the initial email: "I do not want and (un)transparency about our joint effort"

## Alwyn Foster Complaint Filed under SPASD Policy BDDI

*going forward. We all have equity at the front of our work and vision and between the three of us, we lead."*

- What "joint effort" is Peterson referencing? Is this an officially assigned "joint effort" or is it one done on the side and behind the scenes? Is the Superintendent, School Board President or any other district leader aware of this effort?
- Why didn't Foster include this and any other emails from [REDACTED] as a response to Welke's initial PRR dated July 30, 2021?  
?. The PRR was for records (texts and emails) on a specific phone and a specific personal email address "...or any other personal electronic device/account..."

October 25, 2021

Welke, Board President Steve Schroeder, Board Member Foster and Legal Counsel for SPASD meet to discuss the complaint filed by Welke. Welke outlines district policy, ethics and State Law violations by Foster which include:

- Violation of Board Policy BBF School Board Member Code of Ethics more specifically BBF(1) which states that board members shall: Comply with federal, state and local laws and regulations.
- Violation of Board Policy BBF School Board Member Code of Ethics more specifically BBF(6) which states in part: "...encourage communication between the Board and students, staff and community members..." Foster is quite responsive to emails received from certain community members as is evident in the records responsive to the PRR to the DO. More specifically, it appears that Foster is quite responsive to communications pertaining to areas of his particular interest and to certain like minded community members.
- Violation of Board Policy BBF School Board Member Code of Ethics more specifically BBF(8) which states in part that Board members shall: "Model integrity in all matters, especially in the performance of duties and responsibilities as a Board Member; avoid conflicts of interest..."
- **Multiple Violation of District Policy KBG-Access to Public Records** which states that "The Sun Prairie Area School District Board of Education shall allow persons to have access to school district records in accordance with this policy and implementing procedures, and in accordance with state law."
- SPASD implementing procedure KBG-E(1) Access to Public Records reflects that School Board Members are "local public offices" by definition under WI Public Records law. It further states that each Board Member is the "legal custodian" for his or her

## **Alwyn Foster Complaint Filed under SPASD Policy BDDI**

records and the records of his or her office. As such Board Members have full authority to follow up on public records and property law.

- Exhibit KBG-E(1) states, *"As soon as possible, and without delay, the legal custodian must either fill the request or notify the requester of the decision to deny access, giving the specific reason for that decision. If the request is in writing, the legal custodian must provide a written statement of reasons for denial and also inform the requester that the decision to deny access is subject to an action for mandamus."* This language is consistent with state statute, case law and the DOJ Public Records Request compliance guide provided to Foster as an email attachment 2 times.
- Violation of Board Policy BHA Board Orientation which outlines new board member training that is apparently inadequate based on Foster's inability to comply with his board member responsibilities.
- Violation of Board Governance Culture Policy GC3 Board Job Description more specifically GC3(3) which requires effective two-way communication and feedback with citizens.
- Violation of Board Governance Culture Policy GC7 Board Members' Code of Conduct more specifically GC7(1) which directs board members to serve the interests of the citizens of the entire school district. And GC7(1)d which directs members to not publicly express individual negative judgments about Superintendent or Staff performance.
- Violation of Board Governance Culture Policy GC more specifically GC(7)(3)e which states members will make every reasonable effort to protect the integrity and promote the positive image of the district and one another. Involvement in Policy and Law violations DO NOT foster trust with the community, District staff and fellow Board members
- Possible violations of Board Governance Culture Policy GC8 Board Member Conflict of Interest for his involvement in the rental of the CHUMS Auditorium to host Church Services which may be for non-district sponsored professional and financial gain to Foster. Additional district policies that apply to employees make it a violation to be involved in even the appearance of a conflict of interest and should apply to school board members as well.
- Potential Violations of Wis. Stats. governing Public Officials.
- Multiple Violations of Public Records Law Wis. Stats 19.31-19.39.

## **Alwyn Foster Complaint Filed under SPASD Policy BDDI**

### **REMEDY REQUESTED/RECOMMENDED**

Based on the information and records outlined above Welke believes that any reasonable person would conclude that Foster has violated multiple district policies, board culture governance policies and state laws. As such the best path forward to avoid future legal processes, maintain the Boards integrity as a whole and rehabilitate Fosters reputational interests the Board should meet in closed session and demand that Foster comply with all outstanding PRR's. Further the Board should conduct a complete investigation into these allegations. Substantiated violations should be addressed to hold Foster accountable under the Board Governance Policy GC-9 Process for addressing Board Member Violations. In the event the investigation determines that the allegations are unfounded, Foster will be fully exonerated and a record should be produced to reflect the same.

Failure to follow-up in a manner consistent with the seriousness of the allegations may result in an appeal to the entire school board as outlined in BDDI and/or the filing of a formal state law complaint under Wis Stats. 19.59 and a complaint and request for a Writ of Mandamus compelling records production under Wis. Stats 19.31-19.39 with the Dane County DA and the WI DOJ.

### **ADDITIONAL PUBLIC RECORDS REQUEST**

In addition to fulfilling the previous outstanding PRR's submitted by John Welke, pursuant to Public Records Law Wis. Stats 19.31-19.39. John Welke requests, **as soon as practical and without delay**, all school district business records (emails and attached documents) from email account [REDACTED] **and any other non-school district email account** used by Board Member Alwyn Foster from the date that he was sworn in as a SPASD school board member in 2021 through 10/25/2021. Records can be emailed to [REDACTED] or provided to Welke in a hard copy format.

Respectfully submitted to School Board President Steve Schroeder by John Welke on  
10/25/2021