

## DOT admits open records law violation

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The state Department of Transportation admitted Wednesday that it broke the open records law and agreed to pay a \$500 forfeiture for delaying the release of a study on engineering costs.

In a proposed settlement that could end a suit filed by former Attorney General Peg Lautenschlager, DOT officials say they violated a requirement that they respond to requests for public records "as soon as practicable and without delay."

The proposed settlement has not yet been approved by Dane County Circuit Judge Richard Niess.

"This case emphasizes the importance and significance of the open records law," said Kevin St. John, spokesman for Attorney General J.B. Van Hollen, who replaced Lautenschlager this month.

In 2005, Lautenschlager filed a civil complaint against state Transportation Secretary Frank Busalacchi, accusing him of "arbitrarily and capriciously" breaking the records law by withholding a report that said state engineers cost taxpayers 18% less than consultants.

Leaders of a union, the State Engineering Association, cited the open records law when they asked Busalacchi for the report on Aug. 2, 2004. That December, the Journal Sentinel reported that the report was finished in April but not released for another seven months.

According to depositions in the case, Busalacchi and other DOT officials met with Gov. Jim Doyle in May 2004 to discuss issues raised by the report and Busalacchi's hope to hire more state engineers.

"I'm glad that DOT is acknowledging error," Lautenschlager said Wednesday.

Lautenschlager said, however, that Busalacchi made sure the report was not promptly released, so it is "tragic" that he "has not taken responsibility personally" for the violation.

Lautenschlager is wrong, DOT General Counsel Robert Jambois said Wednesday.

In 2005, Busalacchi offered to pay any fine personally, if a violation did occur. But DOT will pay the \$500, and court costs that could total \$70, Jambois said.

"There is simply no evidence of wrongdoing on the part of Secretary Busalacchi," Jambois said.

When union official Tim Hanley requested the study, there was a misunderstanding by DOT officials of how to respond to open records requests, Jambois said.

Since then, at least 200 DOT employees have been trained in how to handle those requests, he said.

In the proposed order settling the case, Jambois said the agency had made these other changes in response to the suit:

- Busalacchi "has designated an executive staff assistant to create and maintain a log" of requests for public records, and the dates of responses to those requests.

- DOT staff members have been told to respond to requests for public records within 10 days, either producing records or giving specific reasons denying the request. If the 10-day deadline cannot be met, a letter must be sent explaining the delay.