

Item 1

July 11, 2005

Village of Shorewood  
Shorewood Foundation  
3930 N. Murray Avenue  
Shorewood, WI 53211

Dear Harvey Kurtz,

This is a formal open records request. I am requesting all e-mail sent to and from Shorewood Foundation members in regard to the Benjamin Trust.

More specifically, I am requesting:

- 1) All e-mail sent from and to Shorewood Foundation board members, past and present, in which William Benjamin, his estate, his gift to the Shorewood Resource Center or the Shorewood Foundation is mentioned.
- 2) All e-mail sent from and to Shorewood Foundation board members, past and present, in which the Benjamin Trust is mentioned.
- 3) All e-mail sent from and to Shorewood Foundation board members, past and present, in which the disbursement, the use of and the future purpose of the Benjamin Trust or William Benjamin's gift is mentioned.

Thank you for your prompt action on this request. You can reach me at the below phone number to discuss acquisition of these documents.

Brendan O'Brien  
Shorewood Reporter  
North Shore Herald  
(262) 317-8586

Item 2 pp. 1

**Kurtz, Harvey A.**

**From:** Kurtz, Harvey A.  
**Sent:** Wednesday, July 13, 2005 6:11 PM  
**To:** 'bo'brien@jcpgroup.com'  
**Cc:** 'Jeffrey Schmeckpeper'  
**Subject:** Shorewood Foundation--Open Records Request

From the Desk of: Harvey A. Kurtz

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Brendan:

Whether Shorewood Foundation, Inc., a Wisconsin corporation, is subject to open meetings and open records laws is a question that has never been resolved. We have had one previous open records request, from Jim Kircher, and it was withdrawn after we voluntarily provided all the information we had that pertained to his request.

The implications of acknowledging that these laws apply to this volunteer organization are not acceptable to me, as an experienced leader of various nonprofit organizations that rely heavily on volunteers to do the work of the organization. It would, first of all, be a deterrent to obtaining the best people to be board members. The best people are often the busiest people, which means, these days, that much of their communication is electronic. If we have to tell board candidates that joining the board means their email is accessible to persons like Geoff Davidian, for example, they will either refuse to serve or refuse to be accessible electronically. That would be catastrophically negative.

Secondly, it would put an end to effective committee work. Since I became the Foundation President, we have emphasized committee work, and the committee work has been exceptional, as evidenced by our very successful annual appeal and the dinner event at Hubbard Lodge. These events were planned by busy volunteers meeting in private homes in the evening, sometimes over a bottle of wine. I cannot imagine the same volume of work being accomplished by volunteers at meetings that must be posted and open to the public. It just won't work.

We can, as I mentioned to you, insulate the Foundation from these laws by amending the bylaws to change how the directors are selected. I would contend (in court if necessary), that the fact that we have this power, even though we have not exercised it, exempts us from these laws. But, do we really want to do that? The biggest thing that happens if we separate ourselves from the Village is that our overhead goes up, and that means more money has to be raised and diverted to administrative expense. If we don't pay for solid administrative infrastructure, as a free standing entity, the Foundation will collapse or get into trouble, and that cannot be permitted to happen.

This email is intended to persuade you to withdraw your "formal open records request" so that the Foundation does not have to decide how to deal with it. We are exhausted from the recent Benjamin Fund court proceedings and cannot bear to see more of our hard-earned resources devoted to litigation. (But, that doesn't mean we are not up to a fight. I for one would certainly want to make a public issue about the damage pursuit of this request would do to voluntarism in a village that is famous for its volunteers.)

This is not to say we won't try to provide all the information that you want, to the extent it exists. I have been the main user of email on Foundation business. My first email is around September 2003 when I volunteered to look into the law surrounding the handling of the Benjamin Fund. That yielded a memo that was not intended to be legal advice and was, initially, marked "confidential." It is part of the court file. I searched my emails for the word "Benjamin" and they are all either pertaining to the litigation or routine administration. I might consider giving you copies of my Shorewood Foundation emails saved in that file on my home computer that do not pertain to the litigation, since that matter is fully resolved on the public record. None of these emails would shed any light on any history of the Benjamin Fund that is not already in the court file. I would not enjoy doing this, but there is nothing there of any sensitivity except, perhaps, the bluntness of some of the prose. I do not want to ask any other person to provide access to you to their personal or professional email accounts and I cannot, personally, give you access to my office email, where the emails exclusively pertain to the litigation, anyway, without

taking it to the Foley & Lardner LLP management and I can guarantee you their answer would be a definite no.

We also collected a lot of pages regarding the Benjamin Fund in the litigation. This material predates my involvement with the fund and includes, for example, Mike Schulte's full file on the subject. That is part of the court file. We have an extra copy of this extensive material and can provide it to you at no cost, provided you agree to return it when you are done with it.

That is all we have. None of it is going to shed any light on why the Elder Services Advisory Board mistakenly believed from the day word of this gift first circulated in the Village until the spring of 2004 that it was their money and they could do whatever they wanted with it, with no concern for the terms of the gift's restrictions. There simply is no explanation for that oversight, except that well-intended people were doing well-intended things that turned out to be inconsistent with Wisconsin law applicable to institutional funds (according to legal advisors to the Foundation). In fact, if you talk to that group, many of them probably still believe it is their money, and after the court's decision, they are practically right about that.

Nothing we have explains why Jim Kircher decided to oppose the court petition to obtain the equitable variance. Several of us have spent a lot of time listening to him on that subject and still have no idea where he was coming from.

Nothing we have explains how the terrible ill will that developed in Shorewood over the construction of the library addition has poisoned the community and caused people to say and do strange and awful things in the name of "open government" or "tax reform" or whatever label may have been used. The Benjamin gift arrived at the low point of Shorewood public life (I hope) and some of that awful behavior migrated into discussions concerning the gift, manifesting itself in false accusations and lies, name calling, suspicion, and so forth. I know that, from living through it, but have no sources that illuminate the point.

In summary, I will try to give you as much information as is humanly possible, within the constraints noted above, if you withdraw your request. Even after all is said and done, though, it is my strong belief that you will not learn anything new or gain any useful insights into "why" things are the way they are in Shorewood. That story lies elsewhere, in the library struggle as I see it, but re-telling it now will probably do more harm than good for the Village so I hope you never do get to the bottom of it (if there is one).

Sorry for the length but hope you enjoy the writing! Please let me know where you are on this request at your convenience. Until then, we will not be taking any further action regarding it.

Harvey A. Kurtz  
Direct: 414/297-5819  
Fax 414/297-4900  
[hkurtz@foley.com](mailto:hkurtz@foley.com)  
Foley & Lardner LLP  
777 East Wisconsin Ave. Milwaukee WI 53202-53206



Item 3

Kurtz, Harvey A.

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From: O'Brien, Brendan [bo'brien@jcpgroup.com]  
Sent: Monday, August 15, 2005 10:14 AM  
To: Kurtz, Harvey A.  
Subject: Open records request



open records ATT385002.txt  
request.doc (24 K. (651 B)

Dear Mr. Kurtz,

The open records request sent July 11, 2005 to the Shorewood Foundation regarding the Benjamin Trust stands as written. A copy of that request is attached. Thank you for your prompt action on this request.

Brendan O'Brien