Paul, feel free to use any of this for your story and thanks...

The starting point under Wisconsin law is always that records are supposed to be disclosed unless an exemption applies, and that every benefit of the doubt is supposed to cut in favor of the public's right to know. The courts in Wisconsin have looked very unfavorably on the broad use of exemptions to withhold information about misconduct by public employees, in particular.

In the first place, the denial that you received is not a legally sufficient denial and if challenged in court, it would be thrown out as inadequate. The Wisconsin Court of Appeals ruled in a 2006 case, *Kroeplin v. Wisconsin Department of Natural Resource*s, that if an agency decides that there is a public interest in withholding part of a document that overrides the public interest in access, the agency must specify exactly what that public interest is. Since the university hasn't specified what possible public interest is served by redacting entire conversations over email, the withholding of those emails is not legally well-founded.

In the *Kroplin* case, the judges were very clear that records reflecting on the performance of government officials, such as internal investigations into accusations of wrongdoing, should be disclosed as a matter of public interest and concern, even if those records are hurtful to the employee's reputation.

It's very difficult to see how information about the removal of a high-profile figure like a college basketball coach would be so intimate or embarrassing so as to outweigh the public's legitimate interest in that decision. The public has a significant investment in college athletics, and there is a right to know whether these programs are being well-managed. Without disclosure of internal correspondence such as emails, the public is left to wonder whether the removal was well-justified or whether there is some lurking scandal or mismanagement within the athletic department. Public records laws were meant to remove that uncertainty and allow the public to evaluate important decisions independently without having to blindly trust the decision-maker.

For example, the state court of appeals decided in a 1999 case involving a fired high school principal, *Kailin v, Rainwater*, that the information in an internal investigation of the behavior of the principal should be disclosed under the state open records act, in spite of the principal's objection that the report would contain embarrassing personal information that would harm his reputation. The principal's interest in avoiding embarrassment was not considered weighty enough to overcome the public's right to know how he behaved in office. The judges said in that case that there must be an "overriding public interest" in withholding records from disclosure, meaning not just the private concerns of a few individuals but a greater public concern for confidentiality. It's difficult to see any overriding public interest in keeping the circumstances of a coach's firing confidential, since coaches all know they're eventually going to be fired. An "overriding" public interest might be something like protecting a confidential informant whose safety has been threatened. That would be highly unusual in the case of a basketball coach, and in any case that would not justify wholesale withholding of entire records.

The attorney-client privilege does not cover every single email between the lawyer for a government agency and its employees. The email would have to be about the delivery of legal

advice, and it would have to contain confidential information that isn't already widely known or hasn't been shared with others. It's a narrow exemption that should not give the college a blanket license to withhold every word of every email involving a lawyer. Here is how a state appeals court in Wisconsin described the privilege in a recent 2015 decision: "A mere showing that the communication was from a client to his attorney is insufficient to warrant a finding that the communication is privileged." To be privileged, the record must "directly or indirectly reveal the substance of a confidential client communication."

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