

Pursuant to the state public records law, Allen requested an audio copy of a phone conversation he had as an inmate at the New Lisbon Correctional Institution. The records custodian denied the request. Allen petitioned the circuit court for a writ of mandamus that would require the custodian to provide him with a copy of the requested record. The circuit court issued an alternative writ of mandamus that required the custodian to release the requested record or to show cause to the contrary.²

The records custodian moved to quash the writ. The custodian argued that disclosure of the prison call recording would be unlawful under the Wisconsin Electronic Surveillance Control Law or its federal equivalent. The circuit court granted the motion to quash and dismissed Allen's petition. *See* WIS. STAT. § 783.01 (“[T]he defendant may move to quash the writ and such motion shall be deemed a motion to dismiss the complaint under [WIS. STAT. §] 802.06(2).”).

Allen argues that the electronic surveillance control law does not apply to his public records request, and that the records custodian has a duty to provide him with the requested record under the state public records law. The custodian has not filed a brief but instead has filed a one-paragraph position statement in which she states that she now “waives” the argument she made in support of her motion to quash. The custodian further states that she does not oppose any order by this court summarily reversing the circuit court's dismissal order and remanding for further proceedings.

² To be more precise, the alternative writ of mandamus required the records custodian to release all “non-confidential, unprivileged, and available information” contained in the requested record.

The records custodian's position statement is, in effect, an abandonment of the sole basis for her motion to quash. Further, the custodian does not advance any alternative basis on which we might affirm the circuit court. Accordingly, we summarily reverse and remand for the circuit court to deny the custodian's motion to quash and for further proceedings in which the custodian will have the opportunity to file a return. *See Walter Laev, Inc. v. Karns*, 40 Wis. 2d 114, 117, 121-22, 161 N.W.2d 227 (1968) (explaining that, upon denial of a motion to quash an alternative writ of mandamus, the circuit court should have allowed the filing of a return); *see also State ex rel. Dalton v. Mundy*, 80 Wis. 2d 190, 194, 196-97, 257 N.W.2d 877 (1977) (affirming the circuit court's denial of a motion to quash an alternative writ of mandamus and acknowledging defenses that might still be raised by return).

Therefore,

IT IS ORDERED that the circuit court's order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1), and the cause remanded with directions that the circuit court deny the motion to quash and for further proceedings consistent with this opinion.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals