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MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT II**

September 22, 2021

To:

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Circuit Court Judge  
Electronic Notice

Samuel A. Christensen  
Clerk of Circuit Court  
Racine County  
Electronic Notice

Samuel C. Hall Jr.  
Electronic Notice

Benjamin A. Sparks  
Electronic Notice

Stephen Lee  
5555 N. 39th St.  
Milwaukee, WI 53209

You are hereby notified that the Court has entered the following opinion and order:

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2020AP1941

Stephen Lee v. Matt Soens (L.C. #2020CV1267)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

By his petition for a writ of mandamus, Stephen Lee complains that the Village of Mount Pleasant Police Department and Chief of Police Matt Soens (collectively, the Department) unlawfully withheld from him records responsive to a February 27, 2020 “Access to Records” request. The circuit court sua sponte dismissed Lee’s petition on the basis that it failed to state a claim upon which relief may be granted. Lee appeals pro se. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary

disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> For the following reasons, we reverse and remand for further proceedings on Lee’s public records claim only.

We review de novo the dismissal of a complaint for failure to state a claim, accepting as true all factual allegations in the complaint and all reasonable inferences therefrom. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶¶17-19, 356 Wis. 2d 665, 849 N.W.2d 693; *Wisconsin Mfrs. & Com. v. Evers*, 2021 WI App 35, ¶10, 398 Wis. 2d 164, 960 N.W.2d 442. The sufficiency of a complaint “depends on the substantive law that underlies the claim.” *Wisconsin Mfrs.*, 398 Wis. 2d 164, ¶10 (citing *Data Key Partners*, 356 Wis. 2d 665, ¶31). “[T]he alleged facts related to that substantive law must ‘plausibly suggest [that the plaintiff is] entitled to relief.’” *Id.* (second alteration in original; citation omitted).

WISCONSIN STAT. § 19.35(1) provides that “[e]xcept as otherwise provided by law, any requester has a right to” (a) “inspect any record,” and (b) “make or receive a copy of a record.” Section 19.35(4)(a) provides that “[e]ach authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.” A request is “deemed sufficient if it reasonably describes the requested record or the information requested.” Sec. 19.35(1)(h).

WISCONSIN STAT. § 19.31 provides that WIS. STAT. §§ 19.32 to 19.37 “shall be construed in every instance with a presumption of complete public access .... The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

denied.” Public records are “subject to a strong presumption favoring their disclosure” and a government entity resisting disclosure bears the burden “to rebut the strong presumption to the contrary.” *C.L. v. Edson*, 140 Wis. 2d 168, 182, 409 N.W.2d 417 (Ct. App. 1987).

If the custodian’s decision [regarding disclosure] is challenged, ... a court must make its own independent decision[] regarding [this] matter[], including the balancing test. “The duty of the custodian is to specify reasons for nondisclosure and the court’s role is to decide whether the reasons asserted are sufficient.” *If the custodian states no reason or insufficient reasons for refusing to disclose the information, the writ of mandamus compelling disclosure must issue.* A court should apply the balancing test “when the record custodian has refused to produce the record, in order to evaluate the merits of the custodian’s decision.” Where ... the relevant facts are undisputed, we review de novo a custodian’s balancing decision of whether the public interest in nondisclosure of the challenged information outweighs the public interest in disclosure. It is the burden of the party seeking nondisclosure to show that “public interests favoring secrecy outweigh those favoring disclosure.”

*John K. MacIver Inst. for Pub. Pol’y, Inc. v. Erpenbach*, 2014 WI App 49, ¶14, 354 Wis. 2d 61, 848 N.W.2d 862 (emphasis added; citations omitted).

According to Lee’s petition, his action is based upon the Department’s failure to respond to a February 27, 2020 letter request he made for records related to the location where his vehicle had been towed following a traffic stop.<sup>2</sup> Lee’s February 27 letter is addressed to the “Village of Mount Pleasant Police Department” and identifies that it is from “Stephen E. Lee,” an inmate in

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<sup>2</sup> To the extent we do not address an appellate claim of Lee’s, we reject it because it is insufficiently developed and/or raised for the first time on appeal. See *ABKA Ltd. P’ship v. Board of Rev.*, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) (We do not address undeveloped arguments.); *Shadley v. Lloyds of London*, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838 (“It is well-established law in Wisconsin that those issues not presented to the [circuit] court will not be considered for the first time at the appellate level.”). Furthermore, Lee raised numerous claims before the circuit court that he does not address on appeal; as a result, we consider him to have abandoned those claims. *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (“[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.”).

the Racine County Jail.<sup>3</sup> The letter states it is regarding “Access to Records Request,” pursuant to cited public records statutes, and relates to the “[t]owing of [a] 2007 Toyota Corolla 02/15/20.” The letter further indicates that during a February 15, 2020 “traffic stop,” a Mount Pleasant Police Officer directed the towing of Lee’s vehicle, and “told me he would get me the information where my car was being towed, but he never gave me that information.” Lee concludes the letter by stating that pursuant to the public record laws, he was “requesting to know” the location of his “2007 Toyota Corolla” that “was towed on Sat 02/15/20,” and identifies the license plate number for the vehicle.

In its response brief on appeal, the Department cites to WIS. STAT. § 19.35(1)(h), correctly noting that “a request for a record under the open records law must ‘reasonably describe[] the requested record or the information requested.’ ‘However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.’”

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<sup>3</sup> Citing WIS. STAT. § 19.32(1c) and (3), the Department asserts that Lee “was not a ‘Requester’ under the open records law because his own allegations establish that he was incarcerated at the [Racine County Jail] on the date of his ‘access to records’ letter.” “This means,” the Department continues, “that, unless Lee’s record request ‘contain[ed] specific references’ to him and it was ‘otherwise accessible’ by him, by law he did not have standing to avail himself of Wisconsin open records law.” Because the Department fails to sufficiently develop this argument, we do not consider it. *See ABKA Ltd. P’ship*, 231 Wis. 2d at 349 n.9. That said, we note, as the Department alludes, that § 19.32(3) provides in relevant part that an “incarcerated person,” which Lee’s letter of February 27, 2020, indicated he was at the time, is not a “requestor” under § 19.32 “*unless* the person requests inspection or copies of a record that contains *specific references to that person* ... and the record is *otherwise accessible to the person by law*.” (Emphasis added.) Lee’s letter of February 27 certainly “contains specific references to” him as the letter identifies the incident of *his* arrest, the towing of *his* specifically-identified vehicle, and his request for information identifying the location of *his* vehicle. We further point out that the Department develops no argument suggesting that any responsive records Lee sought with his February 27 letter, to the extent any such records exist, were not “otherwise accessible [to him] by law,” and we see no basis for such a conclusion.

Lee's February 27 letter satisfies subsection (1)(h) as the letter "reasonably describes the requested record or the information" and is "reasonabl[y] limit[ed] as to subject matter [and] length of time." *See* WIS. STAT. § 19.35(1)(h). By his letter, Lee sought records kept by the Department that identify the location of where his specifically-identified vehicle had been towed in connection with his February 15, 2020 traffic stop. This February 27 letter request could only relate to records created on or after February 15 and almost certainly would be limited to records referencing Lee by name, in connection with his specifically-identified corolla and his February 15 arrest.<sup>4</sup>

In its sua sponte decision dismissing Lee's complaint, the circuit court based its decision on the following:

Lee, further alleges that he was present at the time the tow truck arrived ... and that Mr. Lee identified the tow truck company (Jensen Towing). With ... Lee, present and observing that a "Jensen Towing" truck towed his vehicle, it was incumbent on Mr. Lee to contact the towing company directly regarding any information or questions he may have had.

There are two problems with the circuit court's ruling. First, we see nowhere in Lee's complaint or the attachments to it that the tow truck said "Jensen Towing" on it or, if it did, that Lee observed that name on the truck. Second, for purposes of stating a claim upon which relief may be granted, it would not matter if Lee had actually seen "Jensen Towing" on the truck—if he sufficiently requested records related to the location of his vehicle, as he did, he was entitled

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<sup>4</sup> We note that we have been unable to find any indication in the complaint, documents attached thereto, or the Department's briefing on appeal suggesting the Department did not receive Lee's letter of February 27, 2020, or that it was not in possession of any records responsive to the letter request. Moreover, the Department does not suggest that it would be particularly onerous to locate such records—for example, perhaps the arresting officer's report related to the February 15, 2020 arrest and towing.

to receive a copy of such records, absent any other legal basis precluding that. While Lee's knowledge from other sources as to the location of his vehicle ultimately may affect damages available to him under the public records law,<sup>5</sup> such knowledge does not undermine the validity of his records request; indeed, Lee's reasons for seeking the information are largely irrelevant to the question of whether he is entitled to it. *See, e.g.*, WIS. STAT. § 19.35(i) (“[N]o request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request.”). That said, Lee's complaint and the attached February 27 letter indicate that Lee did *not* know where his vehicle had been towed.<sup>6</sup> We must accept as true all factual allegations in the complaint and all reasonable inferences therefrom. The court's conclusion that at the time Lee made his public records request Lee knew that Jensen Towing had towed away his corolla is unsupported by the reading of the complaint or the documents attached to it under the standards applicable to a motion to dismiss.

For the foregoing reasons, we conclude that the circuit court erred in determining that Lee's complaint failed to state a claim upon which relief may be granted, and we reverse and remand for further proceedings.

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<sup>5</sup> In his complaint, Lee seeks damages beyond the scope of what might be available to him under the public records law. Because his public records law claim is the only claim that survives this appeal, he is limited on remand to such damages. *See* WIS. STAT. § 19.37.

<sup>6</sup> Lee's complaint states: “Officer Winter then told [Lee] he would get [Lee] the information where his vehicle was being towed, but he never gave [Lee] that information, before or after the tow truck arrived,” and “[b]ecause Officer Winter never gave [Lee] the information where his vehicle was being towed on 02/15/20 or no time thereafter, on 02/27/20 [Lee] submitted to the [police department] an access to records request to get information [as to] where his vehicle had been towed.”

IT IS ORDERED that the order of the circuit court is hereby summarily reversed and the cause remanded for further proceedings. *See* WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*