

2016 1st Quarter Correspondence

Index

	Page
Public Records – timeframe for response	2
Public Records – elected official’s postings on Twitter	5
Open Meetings – meeting agenda and minutes, governmental body	7
Public Records – no records exist	10
Public Records – scheduled time to review records, written denial of request, redactions	12
Public Records – timeframe for response, open line of communication	16
Public Records – incarcerated requestor, prosecutor’s case file, timeframe for response	19
Public Records – incarcerated requestor, mandamus requirements	22
Public Records – enforcement options	24
Public Records – written denial of request, contractor’s records	26
Public Records – written denial of request, no records exist	29
Public Records – OOG will retain correspondence	32
Public Records – insufficient information, timeframe for response	34
Open Meetings – notice requirements	37
Public Records – incarcerated requestor, outside scope of OOG	40
Public Records – enforcement options	43



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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January 8, 2016

Mr. Mike Fritz
[REDACTED]

Monona, WI 53716
[REDACTED]@charter.net

Dear Mr. Fritz:

The Department of Justice (DOJ) is in receipt of your November 2, 2015 correspondence to Attorney General Brad Schimel in which you asked the Attorney General's office to intervene in compelling the Department of Administration (DOA) to provide a timely response to your public records request.

DOJ cannot offer you legal advice or counsel concerning this issue as the DOJ may be called upon to represent DOA. However, the Attorney General and the DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

The Public Records Law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "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." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

The Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester.

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority only in cases presenting issues of statewide concern. While you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf at this time.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. You may reach it using the contact information below:

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(608) 257-4666

<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

The referral service is free; however, a private attorney may charge attorneys fees. If you decide to consult an attorney, I suggest you provide him or her with all of the relevant documents and information.

Although DOJ cannot offer you legal advice or counsel regarding this issue, I contacted DOA Legal Counsel Betsy Winterhack regarding your matter. She informed me that DOA responded to your public records request in November 2015.

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

Mr. Mike Fritz
January 8, 2016
Page 3

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

cc: Betsy Winterhack, DOA Legal Counsel



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January 8, 2016

Mr. Michael Murphy

Milwaukee, WI 53207

[\[REDACTED\]@wi.rr.com](mailto:[REDACTED]@wi.rr.com)

Dear Mr. Murphy:

The Department of Justice (DOJ) is in receipt of your November 9, 2015 correspondence to Attorney General Brad Schimel in which you stated, "It appears that State Senator Leah Vukmir has blocked me from her official Twitter Account. Since the account is titled 'Senator Leah Vukmir,' would this be in violation of the Open Records Law?"

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent legislators. However, I can inform you that the Public Records Law, Wis. Stat. §§ 19.31 to 19.39, concerns access to government records, which, generally, includes material created or kept by an authority. An elective official's postings on an official social media account, such as Twitter, generally would fall under the law's definition of "record" and would be subject to inspection by the public. In this case, while you may have been blocked by the Senator on Twitter, her Twitter account, including all postings, remain public. Any individual can access the Senator's Twitter account to view her postings. A simple internet browser search provides access to the account, e.g., a Google search for "Senator Leah Vukmir Twitter." The Public Records Law does not pertain to citizen correspondence with elective officials.

The Attorney General and the DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

Mr. Michael Murphy
January 8, 2016
Page 2

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "P. M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government



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DEPARTMENT OF JUSTICE**

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January 12, 2016

Ms. Rosemarie Annonson
[REDACTED]@hotmail.com

Dear Ms. Annonson:

The Department of Justice (DOJ) is in receipt of your initial November 12, 2015 correspondence, the subject of which we discussed during our telephone conversation the same day. DOJ is also in receipt of your November 13, 2015 email correspondence regarding the same matter. You state that you are dissatisfied with the Milwaukee corporation counsel's response to your Open Meetings Law complaint. The complaint concerns the content of meeting minutes and the manner in which meeting minutes are prepared. You also raised concerns regarding potential conflicts of interest of certain city officials.

Regarding the issue of potential conflicts of interest and other alleged violations you reference, the Attorney General can only advise the public on issues relating to the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. Therefore, I cannot advise you regarding potential conflicts of interest or the other alleged violations that do not pertain to the Open Meetings Law or Public Records Law as these are outside the scope of DOJ's Office of Open Government. However, I can address the various issues you raised concerning the Open Meetings Law.

You raised concerns regarding the meeting agenda and minutes. Specifically, you stated there was a lack of data such that "one cannot tell from the contents of the resolution what the resolution is specifically about as necessary info is not attached." Public notice of a meeting must give the "time, date, place and subject matter of the meeting . . . in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). The time, date, and place requirements are generally straightforward. The subject matter requirement is based on what is reasonable under the circumstances. This case-by-case analysis focuses on various factors including the burden of providing more detailed notice, whether the subject is of particular public interest and whether it involves non-routine action that the public would be unlikely to anticipate.

While it may be possible to provide additional details regarding the resolution, it may not necessarily be feasible to attach related documents. If you seek the details of such documents, you may wish to make a public records request pursuant to the Public Records Law.

The Open Meetings Law requires that “motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection” Wis. Stat. § 19.88(3). Written minutes are the most common method for doing so, but they are not the only permissible method. More formal or detailed minutes of other aspects of the meeting, other than motions and roll-call votes, are not required under the law. The law also does not specify a timeframe in which a body must create a record of all motions and roll-call votes. Of course, this can give rise to issues. As a best practice, it is advisable that motions and roll-call votes of a meeting of a governmental body be recorded at the time of the meeting or as soon thereafter as practicable.

You also raise the question of whether the “administrative team” is a governmental body, thereby making the team’s meetings subject to the Open Meetings Law. The law defines “governmental body” in terms of the manner in which such a body is created. A governmental body includes “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . or a formally constituted subunit of any of the foregoing.” Wis. Stat. § 19.82(1). While the definition of governmental body is broad, not all gatherings may fit the definition. For example, the definition is rarely satisfied when groups of a governmental unit’s employees gather on a subject within the unit’s jurisdiction.

I contacted Assistant Corporation Counsel Julie P. Wilson and discussed your open meetings complaint. We reviewed the various aspects of your matter. Regarding the administrative team, ACC Wilson and I discussed the creation and makeup of the team. Her assessment is that the administrative team is an internal working group. Based on the facts presented to me, the administrative team appears similar to an ad hoc group of employees of a governmental unit gathering on subjects within the unit’s jurisdiction, which, generally, would not be subject to the Open Meetings Law. ACC Wilson stated that she worked with you regularly regarding your complaint, but she did not receive enough specifics to proceed further. She indicated that if she were to receive more specific allegations, she would look into them.

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. Several open government resources are available to you through the DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, maintains an Open Meetings Law Compliance Guide and provides a recorded webinar and associated presentation documentation. Additionally, DOJ provides the full Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

Under the Open Meetings Law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). Generally, the Attorney General may elect to prosecute complaints involving matters of statewide concern. In your correspondence, you did not specifically request the Attorney General to file an enforcement action. Nonetheless, we respectfully decline to pursue an enforcement action on your behalf.

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. (In Milwaukee County, the Milwaukee County Office of Corporation Counsel—not the district attorney—serves as legal counsel for the purposes of enforcement of the Open Meetings Law and Public Records Law.) However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). If the district attorney refuses or otherwise fails to commence an action to enforce the Open Meetings Law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

In this case, the corporation counsel declined to pursue an enforcement action. However, you still have the option of pursuing your own action for enforcement. You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. You may reach it using the contact information below:

Lawyer Referral and Information Service

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The referral service is free; however, a private attorney may charge attorneys fees. If you decide to consult an attorney, I suggest you provide him or her with all of the relevant documents and information.

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

Cc: Julie P. Wilson, Assistant Corporation Counsel



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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ATTORNEY GENERAL

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January 20, 2016

Mr. Jeremy Krans
[REDACTED]

La Crosse, WI 54603
[REDACTED]@gmail.com

Dear Mr. Krans:

The Department of Justice (DOJ) is in receipt of your December 4, 2015 correspondence to Attorney General Brad Schimel in which you stated, "I need a written copy of the policy regarding employees at DWD providing their ID# when asked to identify them in a complaint." You also wrote, "They have been refusing to provide a written policy since August."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Department of Workforce Development (DWD). However, I spoke with DWD Chief Legal Counsel Karl Dahlen regarding your matter. DWD has no such written policy, and therefore, DWD has no records responsive to your request. DWD communicated this to you several times. The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, 55 (citation omitted); see also *State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988).

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority only in cases presenting issues of statewide concern. While you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Mr. Jeremy Krans
January 20, 2016
Page 2

Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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January 27, 2016

Justin Waldo

La Crosse, WI 54601

@gmail.com

Dear Mr. Waldo:

The Department of Justice (DOJ) is in receipt of your December 3, 2015 letter in which you requested the Attorney General bring an action for mandamus regarding public records requests you made to the La Crosse Police Department, Mayor Timothy Kabat, and Council Member James Chef.

In your letter, you outline several alleged violations of the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. First, you stated that the Police Department violated Wis. Stat. § 19.34(2)(a) by informing you that you needed to make an appointment to inspect the records and requiring that you do so within a specific time window. Second, you stated that the records provided in response to all three of your requests “contained redactions yet the records that I was allowed to inspect did not contain any redacted records which as per the *John K. MacIver Institute for Public Policy, Inc. v. Erpenbach*, 2014 WI App 49, 354 Wis. 2d 61, 848 N.W.2d 862, 13-1187, stresses that who sent the emails and where they were sent are subject to disclosure.” Third, you stated that the responses to all three of your requests cited attorney-client privilege as a justification for redactions. You stated that “it is impossible for me to determine whether or not the redacted email was truly communication between an attorney and her/his client Therefore, I am asking the State of Wisconsin to review these redacted records and consider their release.” Finally, you stated that the Police Department redacted emails because they contain information of an ongoing investigation. Again, you stated that you are “unable to ascertain whether or not these emails contain information that concern my investigation or warrant being redacted”

I contacted Sgt. Tom Walsh of the La Crosse Police Department to discuss your matter including your allegation that the Police Department violated Wis. Stat. § 19.34(2)(a). That section of the statute states, “Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.”

Wis. Stat. § 19.34(2)(a). Sgt. Walsh informed me that the La Crosse Police Department maintains regular office hours during which time one may have such access to records. Sgt. Walsh also stated that the police department serves the entire community, and they sought to schedule a time for you to inspect the records to ensure someone was available when you arrived.

The law does not prohibit an authority from working with a requester to schedule a time for an in-person inspection of records that is convenient to both. As I informed you in my a November 13, 2015 letter to you, in response to your earlier correspondence concerning a public records issue, the Office of Open Government encourages authorities and requesters to maintain an open line of communication. Communicating regarding scheduling a time to inspect records can be beneficial for all involved. From an authority's perspective, it insures they will have staffing resources available to greet and provide the requested records to the requester, make any requested copies, and assist with any issues that may arise. From the requester's perspective, such an arrangement alleviates potential waiting times and inconvenience that may arise if an authority's staff is assisting others when the requester arrives to inspect requested records.

Regarding your concerns about redactions, the Public Records Law presumes complete public access to public records, but there are some restrictions and exceptions. Wis. Stat. § 19.31; *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683, 137 N.W.2d 470 (1965). Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1, Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor case law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This "balancing test" determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. An authority must conduct the balancing test on a case-by-case basis taking into consideration the totality of the circumstances.

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). The reason must be specific and sufficient to provide the requester with adequate notice of the reasons for denial. In every written denial, the authority must also inform the requester that "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b). You are correct in stating that without knowing what was redacted, you cannot determine whether such a redaction was proper. However, to provide you with the redacted information, in order for you to make that determination, would defeat the purpose of redactions entirely.

In my November 13, 2015 letter, I informed you that the Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. These remedies are also available if you are dissatisfied with an authority's redactions and/or their reasons for redactions. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). It is not the Attorney General's role to review redacted records and consider their release, as you requested. Such a responsibility would be performed by a judge as part of an action for mandamus. The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority only in cases presenting issues of statewide concern. While the public records issue that you raised is important to you and those in your community, it does not appear to raise issues of statewide concern. Therefore, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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DOJ appreciates your concern. The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. Several open government resources are available to you through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

At DOJ, we are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

Justin Waldo
January 27, 2016
Page 4

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

cc: Sgt. Tom Walsh, La Crosse Police Department



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February 8, 2016

Mr. Michael Kinney
[REDACTED]

Wisconsin Rapids, WI 54494
[REDACTED]@hotmail.com

Dear Mr. Kinney:

The Department of Justice (DOJ) is in receipt of your December 1, 2015 email correspondence to Attorney General Brad Schimel in which you stated that you filed “an Open Records request with the Wood County Sheriffs department records administrator over two weeks ago.” You stated that “DOJ guidelines specify 10 working days,” and asked “How can I get them to take this seriously and comply with this serious request?”

DOJ’s Public Records Law Compliance Guide states that DOJ policy is that ten working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records. However, the Public Records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority “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.” Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response “depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations.” *WIREData, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm’rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority “can be swamped with public records requests and may need a substantial period of time to respond to any given request”).

The Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. If it becomes apparent to an authority that a public records request may require a longer response time, it may be prudent that the authority provide the requester with a letter providing an update on the status of the response and, if possible, indicating when a response might be anticipated. Similarly, if an authority receives an inquiry from a requester seeking an

update on the status of the request, it is advisable for the authority to respond to the requester with an update.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains the Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. While the public records issue that you raised is important to you and those in your community, it does not appear to raise issues of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. You may reach it using the contact information below:

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State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666

<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

The referral service is free; however, a private attorney may charge attorneys fees. If you decide to consult an attorney, I suggest you provide him or her with all of the relevant documents and information.

Mr. Michael Kinney
February 8, 2016
Page 3

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
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Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

February 8, 2016

Mr. Michael Wallerman, #241856
Racine Correctional Institution
P.O. Box 900
Sturtevant, WI 53177

Dear Mr. Wallerman:

The Department of Justice (DOJ) is in receipt of your November 22, 2015 correspondence to Attorney General Brad Schimel in which you stated that you sent an open records request to Waukesha County District Attorney Susan Oppen "seeking verification that prior acts evidence used in my adult trial in December of 1994, 94-CF-290, are expunged juvenile adjudications stemming from case 89-JV-994." You stated that you have not received a response and ask the Attorney General to file an action for mandamus on your behalf.

As an incarcerated person, your right to request records under the Public Records Law is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See* Wis. Stat. § 19.32(1c) and (3).

There is a general presumption that "public records shall be open to the public unless there is a clear statutory exception, unless there exists a limitation under the common law, or unless there is an overriding public interest in keeping the public record confidential." *Hathaway v. Joint Sch. Dist. No. 1, City of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). However, access to prosecutors' case files, whether open or closed, are exempt from disclosure. The Wisconsin Supreme Court has determined that "the common law provides an exception which protects the district attorney's files from being open to public inspection." *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 433-34, 477 N.W.2d 608 (1991). Therefore, if the records you seek are part of the prosecutor's file, such records are exempt from disclosure. You may wish to contact your trial counsel regarding your request.

In your correspondence you stated that District Attorney Oppen "was given a deadline of 14 days to respond" to your request and that to date you have not received a response. The Public Records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority

“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.” Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response “depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations.” *WIREData, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm’rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority “can be swamped with public records requests and may need a substantial period of time to respond to any given request”).

The Attorney General and DOJ’s Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

The Public Records Law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. While the public records issue that you raised is important to you and those in your community, it does not appear to raise issues of statewide concern. As a result, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. You may reach it using the contact information below:

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Mr. Michael Wallerman, #241856

February 8, 2016

Page 3

The referral service is free; however, a private attorney may charge attorneys fees. If you decide to consult an attorney, I suggest you provide him or her with all of the relevant documents and information.

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Andrew C. Cook
Deputy Attorney General**

**17 W. Main Street
P.O. Box 7857
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www.doj.state.wi.us**

**Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779**

February 8, 2016

Mr. Lee Ratzel, #174882
Milwaukee Secure Detention Facility
P.O. Box 05911
Milwaukee, WI 53205-0911

Dear Mr. Ratzel:

The Department of Justice (DOJ) is in receipt of your November 16, 2015 correspondence to Attorney General Brad Schimel in which you stated, "I would like for you or either your office to send to me an application to file an mandamus to get documents from the Sandridge Secure Treatment Center on two of their employees who work there at the Sandridge Secure Treatment Center." You stated that you filed two public records requests with the Sandridge Secure Treatment Center, and they were both denied. You were also told "to get an application from the Attorney General and file a mandamus."

You stated you made public records requests for documents regarding employees who work at the Sandridge Secure Treatment Center. However, as an incarcerated person, your right to request records under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See* Wis. Stat. § 19.32(1c) and (3).

In your correspondence you also requested that the Attorney General send you an "application to file an mandamus." There is no specific application for filing an action for mandamus. If an authority denies a records request, the Public Records Law provides that a requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

However, as stated above, as an incarcerated person, your public records requests are limited to records that contain specific references to yourself or your minor children. *See* Wis. Stat. § 19.32(1c) and (3). Therefore, if you are not seeking such records, an action for mandamus may be unsuccessful because as an incarcerated person you are not a "requester" under the public records law as it relates to the records you seek. *See* Wis. Stat. § 19.32(3).

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. You may reach it using the contact information below:

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The referral service is free; however, a private attorney may charge attorneys fees. If you decide to consult an attorney, I suggest you provide him or her with all of the relevant documents and information.

If you would like to learn more about the Wisconsin Public Records Law, DOJ's Office of Open Government offers several open government resources through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

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Sincerely,



Paul M. Ferguson

Assistant Attorney General

Office of Open Government

PMF:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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**Paul M. Ferguson
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608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779**

February 9, 2016

Ms. Sarah Marie Chermak
[REDACTED]@yahoo.com

Dear Ms. Chermak:

The Department of Justice (DOJ) is in receipt of your November 20, 2015 email correspondence to the Office of Open Government in which you request help "obtaining a copy of the original tax return created by and through an agent of Wisconsin Department of Revenue." You stated that you have no original tax document and that you "want to know who created this document and have a hardcopy of said document complete with required signature."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Department of Revenue (DOR). However, it is my understanding that you received various requested records in late 2015. If you require additional assistance, you may wish to contact DOR Disclosure Officer Jeff Hanson at (608) 266-8474. Furthermore, if you wish to obtain copies of your previously filed tax returns you may wish to visit the following page on DOR's website: <https://www.revenue.wi.gov/faqs/ise/request.html>.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority only in cases presenting issues of statewide concern. While you did not specifically

Ms. Sarah Marie Chermak
February 9, 2016
Page 2

request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may choose to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: Jeff Hanson, DOR Disclosure Officer



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Andrew C. Cook
Deputy Attorney General**

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**Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779**

February 19, 2016

Ms. Rita Jubie

[REDACTED]
Brodhead, WI 53520

Dear Ms. Jubie:

The Department of Justice (DOJ) is in receipt of your November 11, 2015 letter in which you stated that you were “requesting advice and interpretation of Wisconsin open records law and also submitting a written request to the Wisconsin Attorney General’s office for an action of mandamus” regarding your “open records request to the Rock County Sheriff’s office dated 10/5/20105 [sic]” You stated that you submitted two requests, including the October 5, 2015 request, which were both denied.

The copy of the October 5, 2015 request that you provided to DOJ states that you requested records with the date in which the Rock County Sheriff’s department, the Rock County Jail, and/or the Rock County Youth Services Center became aware of a particular nurse’s promotion or the actual date of the promotion. Your letter also indicated that you requested a copy of a document entitled “2015-04-23 Awards Ceremony Announced.” It is my understanding that the particular nurse is employed with a company with which the Rock County Sheriff’s office contracts. The Rock County Sheriff Office replied to your request stating that the nurse did not work for them, they are not the custodian of the requested record, and the record belongs to the contracted company. You also stated that the response letter from the Rock County Sheriff Office did not include a statement informing you that the denial was subject to review in an action for mandamus.

First, the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, states, “Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney.” Wis. Stat. § 19.35(4)(b). If a response to a written public records request denies the request, in whole or in part, the authority must include this language.

Next, the Public Records Law states, in part, “[E]ach authority shall make available for inspection and copying under s. 19.35(1) any record produced or collected under a contract

entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority.” Wis. Stat. § 19.36(3). Based on the facts as I understand them, the records you requested may constitute records “produced or collected under a contract entered into by the authority with a person other than an authority,” and thus, may be subject to disclosure under the Public Records Law.

I spoke with Captain Gary L. Groelle of the Rock County Sheriff’s Office regarding your matter. We discussed your request, and the Rock County Sheriff’s Office’s response. They provided you with the document entitled, “2015-04-23 Awards Ceremony Announced.” Rock County Sheriff’s Office intends to contact you regarding the remainder of your request.

As you may already be aware, the Public Records Law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. While the public records issue that you raised is important to you and those in your community, it does not appear to raise issues of statewide concern. As a result, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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Ms. Rita Jubie
February 19, 2016
Page 3

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

cc: Captain Gary L. Groelle, Rock County Sheriff's Office



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

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FAX 608/267-2779

February 19, 2016

Ms. Tammy Magnuson
[REDACTED]

Winter, WI 54896
[REDACTED]@yahoo.com

Dear Ms. Magnuson:

The Department of Justice (DOJ) is in receipt of your November 27, 2015 email correspondence to the Attorney General's office in which you stated that you "would like to find out how I go about getting a report from the Tomah school district." You stated that you wrote the school asking for a copy of a report related to your granddaughter's visit to her guidance counselor. You stated that the school said they cannot release the report "if they had it."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Statutes, case law, and the public records law balancing test, which weighs the public interest in disclosure of a record against the public interest in nondisclosure, provide such exceptions.

Based on the information you provided, it appears you submitted a written request for the report. Upon receiving a public records request, an authority "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." Wis. Stat. § 19.35(4)(a). If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. Wis. Stat. § 19.35(4)(b).

The Public Records Law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, 55 (citation omitted); see also *State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the

authority has no such record. While the Public Records Law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

Your correspondence states that “the school said they cannot release [the report], if they had it.” It is unclear whether the school was informing you that the requested record did not exist or if the school had the requested record and was denying your request. If the school had the requested record and was denying your written request, the law requires that they provide you the written reasons for the denial.

The Public Records Law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. While the public records issue that you raised is important to you and those in your community, it does not appear to raise issues of statewide concern. While you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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Ms. Tammy Magnuson
February 19, 2016
Page 3

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "P. M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Andrew C. Cook
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**Paul M. Ferguson
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FAX 608/267-2779**

March 10, 2016

Mr. Martin "John" Stoesser
Senior Freedom Press
Senior Chronicle LLC
W1777 Lake Road
Mukwonago, WI 53149

Dear Mr. Stoesser:

The Department of Justice (DOJ) is in receipt of your December 15, 2015 correspondence to Attorney General Brad Schimel in which you included copies of various public record requests to the Mukwonago Library Director and Board. You wrote, "Our request to you would be that you consider opening a temporary file until the Mukwonago matters are settled."

The enclosed documents include two public record requests, dated December 5, 2015; a "second request," dated December 7, 2015, concerning a December 1, 2015 public records request; five public record requests, dated December 15, 2015; and two "second requests," dated December 15, 2015, which follow up your two December 5, 2015 requests; and a December 15, 2015 letter from you to Waukesha County District Attorney Susan L. Oppen asking the District Attorney "to be aware of the matter and to maintain a temporary file for the time being."

In your correspondence, you do not request that DOJ take any action other than to "consider opening a temporary file" until the "matters are settled." DOJ's Office of Open Government will retain a copy of your correspondence, including your enclosed documents, as we do for all correspondence we receive, in accordance with applicable record retention schedules. If you have questions concerning the Public Records Law or Open Meetings Law as they relate to your matter, you may write to the Office of Open Government at the address at the top of the page or contact our Public Records Open Meetings (PROM) Help Line at (608) 267-2220.

The Attorney General and the DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open>

Mr. Martin "John" Stoesser

March 10, 2016

Page 2

government/office-open-government). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

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Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Andrew C. Cook
Deputy Attorney General**

**17 W. Main Street
P.O. Box 7857
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**Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779**

March 10, 2016

Mr. Martin "John" Stoesser
Senior Freedom Press
Senior Chronicle LLC
W1777 Lake Road
Mukwonago, WI 53149

Dear Mr. Stoesser:

The Department of Justice (DOJ) is in receipt of your November 24, 2015 correspondence to Attorney General Brad Schimel in which you included a copy of your November 23, 2015 public records request to the Mukwonago Library Board. You wrote, "It would appear that they [Mukwonago Library Board] are not well versed with the responsibility to respond to such requests. Thank you for your attention to this matter." DOJ is also in receipt of your December 1, 2015 letter to the Attorney General in which you included a copy of your December 1, 2015 public records request to the Director of the Mukwonago Library. You wrote, "It would appear that she [the Director] is not well versed with the responsibility to respond to such requests. Thank you for your attention to this matter."

It is unclear from your correspondence what your purpose is in writing to the Attorney General. In your letters, you state that it "would appear" the Mukwonago Library Board and the Mukwonago Library Director are "not well versed with the responsibility to respond" to public records requests. However, you offer no additional details. Without additional information, I cannot offer specific guidance regarding your matter.

The dates on both of your letters to the Attorney General are the same date or nearly the same date as your public record requests. If the timeliness of a response to a public record request is an issue in your matter, please note that the Public Records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "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." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and

other related considerations." *WIREDdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

The Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester.

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority only in cases presenting issues of statewide concern. There is insufficient information in your correspondence to determine whether your matter presents issues of statewide concern. As a result, while you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf at this time.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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The Attorney General and the DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. I would like you to be aware of several open government resources available to you through the Wisconsin Department of Justice website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

Mr. Martin "John" Stoesser

March 10, 2016

Page 3

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "P.M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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March 14, 2016

Daniel J. Mallin
Staff Counsel
Wisconsin Association of School Boards
122 W. Washington Ave., Suite 400
Madison, WI 53703

Dear Mr. Mallin:

The Department of Justice (DOJ) is in receipt of your November 30, 2015 correspondence to Wisconsin Attorney General Brad Schimel in which you seek a response to two related questions concerning the notice provisions of the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98.

First, you ask, "Assuming that the Attorney General would advise school boards and other governmental bodies of a public school district that posting otherwise-compliant meeting notices in one public place and electronically on a website maintained by the school district is sufficient to meet the public notice requirements of . . . the Open Meetings Law, is that method of giving notice also seen as a recommended/advisable approach (i.e., one that is likely to be at least as effective as traditional physical posting in 3 locations)?"

Second, you ask, "Should governmental bodies continue to consider the electronic placement of a meeting notice on an official website to be merely a "supplement" to other methods of providing public notice . . . or can such electronic placement also be relied upon as (1) substantive, and, (2) at least in some circumstances, independently sufficient, means of directly satisfying the requirement of giving notice of meetings 'to the public' . . . ?"

Under the Open Meetings Law, public notice of all meetings of a governmental body must be given by communication from the governmental body's chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05 and 985.06) or, if there is

no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b).¹ Your questions concern notice to the public.

In addition to the Open Meeting Law's notice requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body. Wis. Stat. § 19.84(1)(a). Thus, in order to comply with the notice requirements of the Open Meetings Law, a governmental body must provide notice to the public, news media who have filed a written request for such notice, the official newspaper (or, if there is no such paper, to a news medium likely to give notice in the area), *and* fulfill the notice requirements of any other relevant statutes.

As stated in DOJ's "Wisconsin Open Meetings Law Compliance Guide" (revised in November 2015), the Attorney General recommends posting notice at three different locations within the jurisdiction served by the governmental body in order to comply with the law's public notice requirement. This recommendation is informed by the notice requirements of Wis. Stat. § 985.02(2)(a). While notice requirements found in other statutes are distinct from those of the Open Meetings Law, nonetheless, they can be instructive in providing examples of appropriate notice methods.

The amendment to Wis. Stat. § 985.02(2)(a) permits posting in at least one public place *and* electronically on the municipality's website. Posting in public is still required under the amendment, but only in one location, not three. Nothing in the Open Meetings Law prohibits posting in one location only; thus, posting in one physical location and on a body's website may be sufficient to meet the public notice requirements of the Open Meetings Law.

However, ultimately, notice under the Open Meetings Law must be reasonable under the circumstances. Posting at three different locations is more likely to be considered reasonable than simply posting in one location. As a result, the Attorney General continues to recommend that a body post notice in three locations. This recommendation helps to ensure compliance with the Open Meetings Law's public notice requirements. Such notice may also be posted on a governmental body's website as a supplement to other public notices. Posting on a website should not be used as a substitute for other methods of notice.

¹ It is important to note that notice to the public and notice to a news medium are separate requirements. A governmental body is not required to pay for, and the news medium is not required to publish, notice provided to the news medium. However, if a governmental body seeks to satisfy the public notice requirement by paid publication in a news medium, the chief presiding officer must ensure that the notice is published.

Daniel J. Mallin
March 14, 2016
Page 3

The Open Meetings Law was enacted in 1976 and some aspects are outdated. For example, the law does not address many of the technological advances in how government business—and business in general—is conducted. As a result, there are many issues that need to be addressed. In July 2015, the Attorney General held an open government summit in which members of the government, attorneys, media, and general public met to discuss some of these challenges. The Attorney General and DOJ's Office of Open Government continue to discuss these issues, and we remain committed to finding ways to address them. At this time, the compliance guide continues to accurately reflect our advice on the issue you describe in your correspondence.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to educate and offer guidance to ensure openness and transparency. There are several open government resources available through the Wisconsin Department of Justice Office of Open Government website (<https://www.doj.state.wi.us/office-open-government/office-open-government-resources>). DOJ provides the full Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, maintains the Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "P. M. Ferguson", is written over a horizontal line.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

cc: Attorney Carol Nawrocki, Assistant Director of the Wisconsin Towns Association



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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FAX 608/267-2779**

March 24, 2016

Mr. Francis Smith, #A-83283
Lawrence Correctional Facility
10930 Lawrence Road
Sumner, IL 62466

Dear Mr. Smith:

This letter is in response to your December 9, 2015 letter to the Wisconsin Department of Justice (DOJ) Office of Open Government (OOG). Your letter sought to clarify certain issues in my December 1, 2015 letter to you, which was in response to your September 19, 2015 letter to the Attorney General.

First, you clarified that your September 19, 2015 letter "was not a F.O.I.A. document request" but "a request for your office to send fingerprints to the F.B.I. . . ." The OOG works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law. Your request is outside the scope of the OOG's responsibilities; therefore, we cannot assist you with this matter.

Second, you wrote that if "you wish to construe my request as a F.O.I.A., I wish to make the below point." You wrote that you are aware that the Wisconsin Public Records Law states that an incarcerated individual is only considered a "requester" if he or she seeks records pertaining to themselves or their minor children. You continue by stating, "Nothing in your law applies to out-of-state prisoners request." The law states the following:

"Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

Wis. Stat. § 19.32(3). Additionally, the law states, "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement for which the person has been sentenced." Wis. Stat. § 19.32(1c). Nothing in the Wisconsin Public

Records Law limits its use to members of the public residing in Wisconsin. Anyone, including individuals residing out-of-state, including Illinois, can request records pursuant to the law. Similarly, the OOG interprets the definition of "incarcerated person" to include not only those incarcerated in Wisconsin, but individuals incarcerated in other jurisdictions as well.

Finally, you stated that should I disagree with your statements regarding providing fingerprints to the F.B.I. and the Wisconsin Public Records Law's applicability to incarcerated persons outside Wisconsin's jurisdiction, you "request info. to appeal in your state." The Wisconsin Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. Your matter concerns requests made to DOJ, the state department led by the Attorney General. Therefore, although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Wisconsin Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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As mentioned to you in my previous correspondence, since you are in Illinois currently, you may wish to explore any similar programs in that state.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. Several open government resources are available to you through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

Mr. Francis Smith
March 24, 2016
Page 3

The DOJ provides the full Wisconsin Public Records Law, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

Once again, DOJ appreciates your concern. We remain dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you again for your correspondence.

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government



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March 24, 2016

Ms. Linda M. May

[REDACTED]
West Allis, WI 53214 [REDACTED]

Dear Ms. May:

The Department of Justice (DOJ) is in receipt of your December 22, 2015 letter in which you wrote, "I thank you so much for your quick response! I think unfortunately there is definite confusion on your office receiving carbon copies of my open records request . . . I mailed copies to your office for documentation."

On December 14, 2015, I sent two letters to you. The first letter was in response to your public records related issues. This letter summarized my conversations with the Milwaukee Police Department and Assistant City Attorney Peter J. Block regarding the matter. My second letter was in response to what I interpreted as a public records request directed to DOJ. Based on your December 22, 2015 letter, I believe you never intended to direct a public records request to DOJ. I apologize for any misunderstanding or confusion.

Regarding your public records related issues, at the time I wrote you, it was my understanding that the Milwaukee Police Department was processing your public records requests. I hope that your matter has since been resolved. In the event you are still experiencing issues, once again, I am including a summary of the remedies available under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, as well as information on various resources provided by the Office of Open Government. As you may recall, I provided these to you in one of my December 14, 2015 letters.

The Public Records Law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). A requester who prevails in such an action is entitled to reasonable attorney fees, damages of not less than \$100.00, and other actual costs. Wis. Stat. § 19.37(2). A court may award punitive damages if the court finds that an authority or legal custodian arbitrarily or capriciously denied or delayed response to a public records request or charged excessive fees. Wis. Stat. § 19.37(3).

Ms. Linda M. May

March 24, 2016

Page 2

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the Public Records Law; however, he generally exercises this authority in cases presenting issues of statewide concern. While the public records issue that you raised is important, it does not appear to raise issues of statewide concern. Therefore, as stated in one of my December 14, 2015 letters to you, although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the Public Records Law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorneys fees. You may reach it using the contact information below:

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah