

2016 4th Quarter Correspondence

Index

	Page
Public Records – incarcerated requestor, no record exists	2
Public Records – timeframe for response	5
Public Records – balancing test, redactions	8
Public Records – incarcerated requestor, timeframe for response, reasons for denial, no record exists	11
Public Records – balancing test, location and copy fees	14
Public Records – ongoing investigation or litigation, balancing test	17
Public Records – timeframe for response, balancing test, redactions, no record exists, fees	20
Public Records – sufficient request, no “magic words,” no record exists	23
Public Records – employee personnel records, trade secrets	26
Public Records – timeframe for response	29



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
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Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
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December 29, 2016

Mr. Gary P. Abt, #613584
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768

Dear Mr. Abt:

The Department of Justice (DOJ) is in receipt of your undated letter to Attorney General Brad Schimel, received on July 1, 2016, in which you requested the Attorney General enforce your public records request to the Waukesha Police Department for a "computer print-out of my Receipt For Personal Property Stored." I also reviewed the attachments you provided, including your multiple requests and responses from the Waukesha Police Department and the Waukesha County Sheriff Department.

First, it should be noted that, 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). Based on the information you provided, since the records you requested pertain to you, you may request them pursuant to the public records law.

In your correspondence, you provided a letter dated April 26, 2016 from Lieutenant Hendricks of the Waukesha Police Department that you received. This letter stated that the Waukesha Police Department had "previously provided you with our hand written jail documentation of property that is our standard form for documenting prisoner property. I was unable to locate any further record(s) regarding this request." The letter appears to indicate that the police department does not have the computer print-out that you requested; they state they only have a hand-written record, which they provided to you. While DOJ cannot resolve factual disputes, I can inform that 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.

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 novel issues of law that coincide with matters of statewide concern. While the public records issue that you raised is important, it does not appear to present novel issues of law that coincide with matters of statewide concern. As a result, we respectfully decline to pursue an action for mandamus on your behalf.

In your correspondence, you indicated that the district attorney has not responded to your letter regarding this matter. The law does not require a district attorney to bring a mandamus action upon receipt of a written request to do so. *See* Wis. Stat. § 19.37(1)(b). A district attorney has broad discretion to decide whether to bring an action for enforcement. *See State v. Karpinski*, 92 Wis. 2d 599, 607, 285 N.W.2d 729 (1979). The open records law takes into account the fact that district attorneys may not always commence actions for enforcement and provides individuals with the option of commencing their own action pursuant to Wis. Stat. § 19.37(1)(a).

It is important to note that the public records law states that no action for mandamus may be commenced by an incarcerated person later than 90 days after the date the request was denied. Wis. Stat. § 19.37(1m). For requesters who are not committed or incarcerated, an action for mandamus arising under the public records law must be commenced within three years after the cause of action accrues. Wis. Stat. § 893.90(2).

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 attorney's fees. You may reach it using the contact information below:

Lawyer Referral and Information Service
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>

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Mr. Gary P. Abt, #613584

December 29, 2016

Page 3

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

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

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 black ink, appearing to read "Paul M. Ferguson", written in a cursive style.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



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December 28, 2016

Guccifer 3.0
guccifer3.0@gmail.com

Dear Guccifer 3.0:

The Department of Justice (DOJ) is in receipt of your July 21, 2016 email to me in which you stated that you "would like to file an open records complaint against Douglas County District Attorney Daniel Blank." You stated that you filed your public records request anonymously which hinders your ability to file a mandamus action and requested that the Attorney General's office assist you.

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.

Around the time of your email correspondence, we spoke via telephone regarding your matter. I also reached out to District Attorney Blank to discuss your public records request and his response to the request. Subsequently, District Attorney Blank forwarded me copies of his responses to your public records requests, dated July 22, 2016 and August 2, 2016, and it appears that you received the records you requested. I have not received word from you since that time, and it is my hope that your matter is resolved.

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 novel issues of law that coincide with matters of statewide concern. The public records issue that you raised is important, but it does not appear to raise novel issues of law that coincide with matters of statewide concern. As a result, we respectfully decline to pursue an action for mandamus on your behalf.

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 attorney's fees. You may reach the service using the contact information below:

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

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Sincerely,

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

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



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October 31, 2016

Mr. Zachary Just

[REDACTED]
Milwaukee, WI 53202
zjust@outlook.com

Dear Mr. Just:

The Department of Justice (DOJ) is in receipt of your May 10, 2016 email correspondence to Attorney General Brad Schimel in which you provided a link to a news article concerning redacted emails related to the dismissal of the head coach of the university's basketball team. You asked if the Attorney General was aware of what was "happening regarding the situation at UW-Milwaukee and their athletic department." You stated, "I was hoping you could reach out to Media Milwaukee and assist them in their efforts to disclose records that are public information."

The Attorney General and DOJ's Office of Open Government appreciate your concern about this issue. However, DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the University of Wisconsin-Milwaukee, which is part of the University of Wisconsin System. It should be noted that Media Milwaukee has not contacted DOJ regarding this matter.

DOJ is committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its 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. While we cannot offer you legal advice or counsel, we can provide you with some general information regarding the public records law.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." Records are presumed to be open to public

Mr. Zachary Just
October 31, 2016
Page 2

inspection and copying, but there are exceptions. Wis. Stat. § 19.31. 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 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common 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. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

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 novel issues of law that coincide with matters of statewide concern. As stated, DOJ may be called upon to represent the University of Wisconsin-Milwaukee. 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 at this time.

The requester may also wish to contact a private attorney regarding his or her public records matter. The referral service is free; however, a private attorney may charge attorney's fees. The State Bar of Wisconsin operates an attorney referral service. One may reach the service 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.

Mr. Zachary Just
October 31, 2016
Page 3

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Sincerely,

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

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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ATTORNEY GENERAL

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October 31, 2016

Mr. Gary Kimble, #510490114
9-11-66 5D-23 County Jail
949 N. 9th Street
Milwaukee, WI 53233

Dear Mr. Kimble:

The Department of Justice (DOJ) is in receipt of your May 18, 2016 letter to Attorney General Brad Schimel in which you requested that the Attorney General pursue an action for mandamus against the Milwaukee County Jail and Sheriff David A. Clark Jr. and the Milwaukee County District Attorney's Office. You stated that the jail has not provided you with the full discovery regarding an incident between you and Travis J. Moore and that you submitted multiple public records requests and grievances requesting the discovery.

First, it should be noted that, 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). Based on the information you provided, since the records you requested pertain to you, you may request them pursuant to the public records law.

The public records law 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.

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”).

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.

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 novel issues of law that coincide with matters of statewide concern. While the public records issue that you raised is important, it does not appear to present novel issues of law that coincide with matters of statewide concern. As a result, we respectfully decline to pursue an action for mandamus on your behalf.

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 attorney’s fees. You may reach it using the contact information below:

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Mr. Gary Kimble, #510490114

October 31, 2016

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Sincerely,

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Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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ATTORNEY GENERAL

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FAX 608/267-2779

November 28, 2016

Mr. Fabian Maldonado

[REDACTED]
Racine, WI 53403

Dear Mr. Maldonado:

The Wisconsin Department of Justice (DOJ) is in receipt of your April 30, 2016 letter to Attorney General Brad Schimel in which you stated that you wished "to file a complaint on the holder of records in the City of Racine Wisconsin, Attorney Tran, Nhu and holder of records Paul Ancona" regarding the public records request you filed with the City of Racine on April 4, 2016.

You also provided email discussions on the progress of your request and a response letter from Attorney Tran, dated March 29, 2016, explaining that your initial request was overly burdensome as a search resulted in approximately 32,399 emails. Following an exchange of emails describing the number of results and associated estimated costs for subsequent, narrowed searches, you requested to inspect the emails. Attorney Tran informed you that the emails would still require review, and the city would still assess copy costs.

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 balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of 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.

Under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs of *four specific tasks*: (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54 (citation omitted) (emphasis in original). Even if a requester seeks to inspect records, an authority may charge such fees if they are the "actual, necessary, and direct" costs of responding to the request as explained. The amount of such fees may vary depending on

Mr. Fabian Maldonado

November 28, 2016

Page 2

the authority. For example, currently, DOJ's Office of Open Government charges \$0.15 per page for hard copies and \$0.07 per page for scanned copies for records provided in response to public records requests. (DOJ's complete current fee schedule is available at <https://www.doj.state.wi.us/office-open-government/making-public-records-request-department-justice-records>.) The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). Additionally, an authority may require prepayment for the costs associated with responding to a public records request if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f).

As stated above, the amount of fees may vary depending on the authority. It appears that the City of Racine charges \$0.25 per page for hard copies of emails. An authority may not charge for redactions of records. If an authority is copying records for the sole purpose of redaction, such costs are redaction costs and may not be assessed. From the information provided, it is unclear whether the city's sole purpose for copying is for redaction.

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. 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 DOJ 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.

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 novel issues of law that coincide with matters of statewide concern. While the public records issue that you raised is important, it does not appear to present novel issues of law that coincide with matters 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. The referral service is free; however, a private attorney may charge attorney fees. You may reach the service using the contact information below:

Mr. Fabian Maldonado
November 28, 2016
Page 3

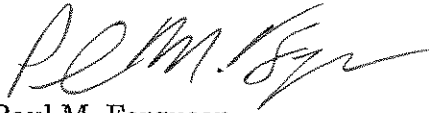
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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

Cc: Attorney Nhu Tran, Assistant City Attorney



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November 28, 2016

Mr. Bryan McElwee

[REDACTED]
Haymarket, VA 20169
bjmcelwee@verizon.net

Dear Mr. McElwee:

The Wisconsin Department of Justice (DOJ) is in receipt of your May 16, 2016 correspondence to me in which you requested the Attorney General “bring an action for mandamus against the Calumet County Sheriff’s Office . . . in order to compel compliance with an open records request I submitted, seeking copies of specified law enforcement records.” You also provided a copy of your requests to the Calumet County Sheriff’s Office and their response partially denying your request.

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.

Your request sought records related to the investigation into the murder of Teresa Halbach and the conviction of Steven A. Avery. In his response to your requests, Calumet County Sheriff Mark Ott informed you that he must “deny your request for access to the records that are noted above as being maintained in a ‘sealed’ evidence container” due to DOJ’s concerns regarding ongoing litigation and the application of the balancing test regarding the integrity of evidence. An ongoing investigation or litigation and whether the confidentiality of the records sought is material to that ongoing investigation or litigation are factors that an authority may consider in applying the balancing test. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811; *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 824-27, 429 N.W.2d 772 (Ct. App. 1988). An authority could determine that release of records while an investigation or litigation is in progress could compromise the investigation or litigation. Therefore, when performing the public records balancing test, an authority could conclude that the public interest in effectively

investigating and litigating a case and in protecting the integrity of the current investigation or litigation outweighs the public interest in disclosing the requested records at that time. *Id.*; Wis. Stat. § 19.35(1)(a).

DOJ is involved with the subject matter of your public records request. Because the Calumet County Sheriff's Office cited DOJ concerns and because of DOJ's continuing involvement in the matter, we must respectfully decline your request for mandamus at this time.

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. DOJ provides several open government resources through its 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.

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 novel issues of law that coincide with matters of statewide concern. As stated, since DOJ is involved with the subject matter of your public records request, 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 referral service is free; however, a private attorney may charge attorney's fees. The State Bar of Wisconsin operates an attorney referral service. You may reach the service using the contact information below:

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P.O. Box 7158
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(608) 257-4666

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

Mr. Bryan McElwee
November 28, 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 black ink, appearing to read "Paul M. Ferguson", written in a cursive style.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

Cc: Calumet County Sheriff's Office



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

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Madison, WI 53707-7857
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

December 29, 2016

Mr. Michael Gerald Miller

Wausau, WI 54401

Dear Mr. Miller:

The Department of Justice (DOJ) is in receipt of a copy of your June 29, 2016 correspondence to me regarding a public records request you made to the Department of Natural Resources (DNR). You stated that it took 99 days to receive your records and that the records included "duplicate, incomplete, excessively redacted and missing records." You also provided emails between you and Karl Brooks and Marcie Marquardt of DNR.

The Attorney General and DOJ's Office of Open Government appreciate your concerns regarding the Wisconsin public records law, Wis. Stat. §§ 19.31 to 19.39. However, DOJ cannot offer you legal advice or counsel concerning your public records request as DOJ may be called upon to represent DNR. Nevertheless, I spoke with DNR Chief Legal Counsel Quinn Williams regarding your matter, and I informed him about your concerns.

It does not appear from your correspondence that you are asking a question or requesting the help of the Attorney General at this time. It appears that you are merely informing DOJ of your concerns. However, I would like to provide you with some general information about the public records law.

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 public records law 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. 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 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common 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. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6). 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 if a requested record does not exist, DOJ advises that authorities should do so.

Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs of four specific tasks: (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54 (citation omitted) (emphasis in original). An authority may require a requester prepay any such fees if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f). An authority may not charge for redaction.

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 novel issues of law that coincide with matters of statewide

Mr. Michael Gerald Miller
December 29, 2016
Page 3

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 at this time.

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 attorney's fees. You may reach the service using the contact information below:

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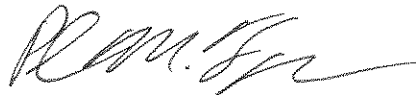
<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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

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

Cc: Quinn Williams, DNR



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
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Paul M. Ferguson
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TTY 1-800-947-3529
FAX 608/267-2779

December 29, 2016

Mr. Will Casey Purvis
WCP@BELAIREDESIGNS.COM

Dear Mr. Purvis:

The Wisconsin Department of Justice (DOJ) is in receipt of your June 15, 2016 email correspondence to me in which you forwarded email correspondence between you and Village of Knapp Clerk, Theresa Kopacz. In your email to me you stated: "I'm going to need your help to get a statement on the amount paid for water. If you can't do it give me the name and phone number of the person who can help." Prior to your correspondence, we communicated multiple times regarding this matter.

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.

A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). There are no "magic words" that are required, and no specific form is permitted to be required in order to submit a public records request. A request which reasonably describes the information or record requested is sufficient. Wis. Stat. § 19.35(1)(h). No specific form is permitted to be required when making a request for public records. A request is sufficient if it is directed at an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h).

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.

Mr. Will Casey Purvis

December 29, 2016

Page 2

Based on the information provided to me, it appears communication may be an issue. The OOG encourages authorities and requesters to maintain an open line of communication. Maintaining civility in that line of communication is essential. Solid communication facilitates the public records process and 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 in cases presenting novel issues of law that coincide with matters of statewide concern. While your matter is important, it does not appear to present novel issues of law that coincide with matters 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 at this time.

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 attorney fees. You may reach the service 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.

Mr. Will Casey Purvis
December 29, 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,

A handwritten signature in black 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

PMF:lah

Cc: Theresa Kopacz (via email)



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
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FAX 608/267-2779

December 28, 2016

Mr. Jed Voller
Vice-President
Personnel Evaluation Inc.
jed@peiasap.com

Dear Mr. Voller:

The Wisconsin Department of Justice (DOJ) is in receipt of your June 9, 2016 email to DOJ Office of Open Government legal associate Pam Majewski regarding your company's employment examination test for job applicants. You stated that a Wisconsin county attorney told you that "he would be compelled to provide the full result under Wisconsin's Open Records law." Your understanding is that under Wisconsin law, an authority is limited to releasing the scores of employment examinations. You asked for DOJ's opinion on two issues:

1. If an employee or their representative request records pursuant to Wisconsin Open Records law or the Records Open to Employee law, can we legally based upon "19.36(10)c" and "103.13(6)c" just provide an overall score and/or individual section score and refuse to supply the detailed "trade secret" portion of the report?
2. If someone other than the above requests to access the employment examination under the Wisconsin Open Records law can we legally based upon "19.36(10)c" just provide an overall score and/or individual section score and refuse to supply the detailed "trade secret" portion of the report?

Wisconsin law provides that the Attorney General must, when asked, provide the legislature and designated Wisconsin state government officials with an opinion on legal questions. Wis. Stat. § 165.015. The Attorney General may also give formal legal opinions to district attorneys and county corporation counsel under certain circumstances. Wis. Stat. § 165.25(3) and 59.42(1)(c). The Attorney General cannot provide you with the opinion you requested because you do not meet this criteria. However, I can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. § 19.31 to 19.39.

The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law applies to records in the custody of an authority.

The public records law 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. 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 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common 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. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6). Even if a record was created by another authority or a non-authority such as a private company, it is the authority records custodian's responsibility to determine whether all or part of a requested record that is being kept by the authority must be released.

Your correspondence did not identify the Wisconsin county attorney with whom you spoke. It is also not clear from the information you provided what the county attorney means by "full result" and "full report."

Under the public records law, an authority shall not provide access to records containing information—except, as relevant here, to an employee or the employee's representative to the extent required pursuant to Wis. Stat. § 103.13—pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited. Wis. Stat. § 19.36(10)(c). Wis. Stat. § 103.13(6)(c) provides that the right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to "[a]ny portion of a test document, except that the employee may see a cumulative total test score for either a section of the test document or for the entire test document. "

You stated that your "report format is unique and we require all users to sign a non-disclosure, trade secrets and confidentiality license" and that "[p]ublic disclosure of the results would compromise our product and result in severe economic harm." Under the public records law, trade secrets are exempt from disclosure under the public records law. Wis. Stat. § 19.36(5); *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, ¶ 83, 312 Wis. 2d 84, 752 N.W.2d 295. "An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c)." Wis. Stat. § 19.36(5). This is a separate exemption from disclosure than Wis. Stat. § 19.36(10)(c). If you believe a record, or certain information within a record, kept by an authority contains your company's trade secrets, you should contact the authority regarding your concerns.

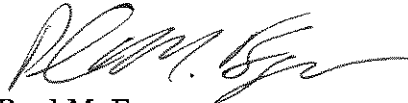
Mr. Jed Voller
December 28, 2016
Page 3

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 its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full public records law, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

DOJ appreciates your concern. The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and we are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you have additional questions, please contact the Office of Open Government's Public Records Open Meetings (PROM) help line at (608) 267-2220. 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

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FAX 608/267-2779

October 31, 2016

Mr. Clyde B. Williams, #022193
Columbia Correctional Institution
HU-6 Room #29
P.O. Box 900
Portage, WI 53901

Dear Mr. Williams:

The Department of Justice (DOJ) is in receipt of a copy of your April 8, 2016 public records request to Racine County Clerk Rose Lee requesting, in part, a copy of the "Acquittal-Certificate Case No. 20-CF-710, 02/07/2001." You also sent a May 23, 2016 notice to me of your intent to file a mandamus action in the Wisconsin Court of Appeals because you stated that you have not received the requested document.

It does not appear from your correspondence that you are asking a question or requesting the help of the Attorney General at this time. However, I would like to provide you with some general information about the public records law.

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 through 19.39, 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 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

Mr. Clyde B. Williams, #022193

October 31, 2016

Page 2

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 novel issues of law that coincide with matters 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 at this time.

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 attorney's fees. You may reach the service using the contact information below:

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

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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah