

## 2017 2nd Quarter Correspondence

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STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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April 4, 2017

Mr. Paul Larsen

[REDACTED]  
Baileys Harbor, WI 54202

Dear Mr. Larsen:

The Wisconsin Department of Justice (DOJ) is in receipt of your July 25, 2016 correspondence and subsequent related correspondence concerning your communication with Gibraltar Area School District Superintendent Tina Van Meer regarding your public records request. In your September 22, 2016 letter to Superintendent Van Meer, sent in response to her letter transmitting records to you and closing your public records request, you stated that you received documents that you authored and that are not responsive to your request, and you raised concerns regarding your son. You provided in your letter that “[b]ecause of the law and education system relationship, a DOJ criminal investigation referral can be necessary in the event these documents have been buried or destroyed.”

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. Regarding your request for a DOJ criminal investigation, the assistance you seek is outside the scope of the Office of Open Government’s responsibilities. While the Office of Open Government works to increase government openness and transparency, we do so with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law. You may wish to contact your local law enforcement agency regarding your concerns about potential criminal matters.

In addition to reviewing the documents you submitted to DOJ, I also spoke with you and the school district’s attorney, Mary S. Gerbig, regarding this matter. You indicated that you were not satisfied with the school district’s response to your public records request. Attorney Gerbig indicated that your initial search produced voluminous results and could have been deemed overly burdensome. However, Attorney Gerbig indicated the school district worked to narrow the request in order to provide you with records. Attorney Gerbig also stated that the request came during the summer when the school district had staffing issues due to scheduled vacations. I last spoke with Attorney Gerbig in October. She indicated that communication with you continued and another response letter was likely to be sent to you, if it had not been sent already. I have not heard from you or the school district since that time, and it is my hope that this matter has been resolved.

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." However, the 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).

You provided me with a copy of Superintendent Van Meer's August 22, 2016 response to your request. In that response, she wrote that the "searches you requested produced over 20,000 documents." Under the public records law, a request "is deemed sufficient if it reasonably describes the requested record or the information requested." Wis. Stat. § 19.35(1)(h). A request "without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request." *Id.* The public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired, and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530.

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"). Additionally, statutorily required notice to certain record subjects may also increase the time it takes an authority to respond to a request. See Wis. Stat. § 19.356. In this case, it appears the school district fulfilled notice requirements pursuant to Wis. Stat. § 19.356(9).

Regarding an authority's fees, 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). Generally, the rate for an actual, necessary, and direct charge for staff time (such as for locating a record) should be based on the pay rate of the lowest paid employee capable of

performing the task. An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).

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. It is often mutually beneficial for a requester and an authority to work with each other regarding a request. This can provide for a more efficient processing of a request by the authority while ensuring that the requester receives the records that he or she seeks. If a request is broad or lacks a timeframe, it may be beneficial for the requester to clarify the request. Certainly, a requester may always submit another request if he or she desires additional records.

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 raise such issues. 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:

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/inedalawyer/pages/lris.aspx>

I would like you to be aware of several open government resources available to you through DOJ's 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. Paul Larsen  
April 4, 2017  
Page 4

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", with a long horizontal flourish extending to the right.

Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah

Cc: Mary S. Gerbig, Attorney for Gibraltar Area School District



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April 5, 2017

Mr. Joel Blackford  
[REDACTED]

Eagan, MN 55122  
jblackford@opg-3.com

Dear Mr. Blackford:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 29, 2016 email to Attorney General Brad Schimel in which you stated, "Over 50 WI Cities and 18 WI Counties use Electronic Content Management from Laserfiche or other document management providers. Do you have a DOJ Statement regarding the legal validity of electronic records kept in systems vs. paper records in WI Courts?"

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. The Office of Open Government works to increase government openness and transparency with a focus on 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.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The law defines a record as "any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority." Wis. Stat. § 19.32(2). A record includes handwritten, typed, or printed documents; maps and charts; photographs, films, and tape recordings; tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved; and electronic records and communications.

Records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. The general statutory requirements for record retention by state agencies, Wis. Stat. § 16.61, and local units of government, Wis. Stat. § 19.21, apply equally to electronic records. Although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). The duty

Mr. Joel Blackford

April 5, 2017

Page 2

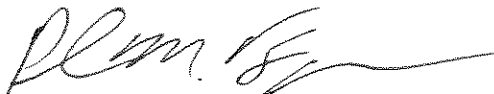
to retain records is governed by the records retention statutes. Under both the open meetings law and public records law, any person may request advice from the Attorney General as to the applicability of those specific laws. *See* Wis. Stat. §§ 19.98 and 19.39. The record retention statutes are outside this authority. As a result we are unable to provide advice or a "DOJ Statement" regarding your matter. You may wish to consult the record retention statutes, Wis. Stat. §§ 16.61 and 19.21, regarding your question.

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.

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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah



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DEPARTMENT OF JUSTICE

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April 5, 2017

Ms. Christine Thies  
[REDACTED]

New Berlin, WI 53151

Dear Ms. Thies:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 28, 2016 email to Attorney General Brad Schimel in which you asked why dismissed charges remain on your "CCAP record."

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. While the Office of Open Government works to increase government openness and transparency, we do so with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law. The question you ask is outside the scope of the Office of Open Government's responsibilities. As a result, we are unable to offer you assistance or insight regarding your issue.

However, we can provide you with some information that you may find helpful. Wisconsin Circuit Court Access (WCCA) provides public access to Wisconsin circuit court records for counties that use the Consolidated Court Automation Program (CCAP) case management system. DOJ is not the custodian of those records. You may wish to contact the Wisconsin Court System regarding your issue. The Frequently Asked Questions section of the Wisconsin Court System's website may also be of assistance to you (<https://wcca.wicourts.gov/faq.xsl;jsessionid=CB47063B37C5D8E484EEF9A4D11F7688.ren der6#Faq1>).

Additionally, you may be interested to know that there is a Wisconsin Circuit Court Access (WCAA) Oversight Committee. You may find information about the committee at the following website: <https://www.wicourts.gov/courts/committees/wcca.htm>.

If you would like to learn more about the Wisconsin public records law and open meetings 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,



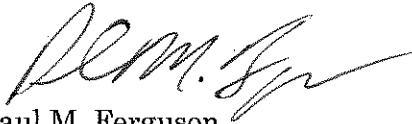
Ms. Christine Thies  
April 5, 2017  
Page 2

Wis. Stat. §§ 19.31 to 19.39, and Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, maintains a Public Records Law Compliance Guide and Open Meetings Law Compliance Guide, and provides recorded webinars 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 black ink, appearing to read "P.M. Ferguson", written in a cursive style.

Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
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April 5, 2017

Ms. Brenda Zellmer

██████████  
Waukesha, WI 53188  
bszellmer@sbcglobal.net

Dear Ms. Zellmer:

The Department of Justice (DOJ) is in receipt of your email to Attorney General Brad Schimel, dated August 4, 2016, in which you asked: "Who do I contact to change the Open Meetings Law status of a 501c3 non profit private school who is now receiving public money because they are in a Community Partnership with the local Public School District and serve about 90 students who are paid for with school district funds?" You provided that the "Board of Directors does not give proper notice, holds random special meetings to vote on important matters, and goes into closed session for discussions about matters which should be in open session according to Open Meetings Law." You stated that you "want them to have to follow the Open Meetings Laws now that they get so much government money -- who do I talk to in order to start this process?"

The Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of government business. Wis. Stat. § 19.81(1). The open meetings law applies to every meeting of a governmental body. A governmental body is defined as:

[A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d

Ms. Brenda Zellmer  
April 5, 2017  
Page 2

310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

The definition of a governmental body includes a "quasi-governmental corporation" which is not defined in the statutes, but the Wisconsin Supreme Court discussed its definition in *State v. Beaver Dam Area Development Corp. ("BDADC")*. *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a "quasi-governmental corporation" does not have to be *created* by the government or be *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.* ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances and set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.* ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation's records. *Id.* ¶ 62. In applying the *BDADC* analysis to any matter, it is important that all relevant information be available.

The information you provided is insufficient to evaluate whether the school in question is a governmental body as defined in the open meetings law and thus subject to the provisions of that law. Nonetheless, I hope that you find the information provided helpful.

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 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 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.

Thank you for your inquiry and your concerns. 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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah



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April 5, 2017

Mr. Duane Tessmer

[REDACTED]  
Madison, WI 53713

Dear Mr. Tessmer:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 25, 2016 letter to the Attorney General of Wisconsin, Brad Schimel, in which you stated that you are enclosing proof of poverty and that you need a letter from DOJ "letting any Police Dept know about the waiver of fees" regarding records.

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). The amount of such fees may vary depending on the authority. 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). Generally, the rate for an actual, necessary, and direct charge for staff time (such as for locating a record) should be based on the pay rate of the lowest paid employee capable of performing the task. An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).

Within the public records law, there is no specific indigency provision. "The public records law confers no exemption as of right on indigents from payment of the fees." *George v. Record Custodian*, 169 Wis. 2d 573, 580, 485 N.W.2d 460 (Ct. App. 1992). However, "an authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest." Wis. Stat. § 19.35(3)(e); *George*, 169 Wis. 2d at 580. Therefore, we are unable to provide you with a letter regarding any waiver of fees because it is up to each authority to determine whether or not to waive fees.

Mr. Duane Tessmer

April 5, 2017

Page 2

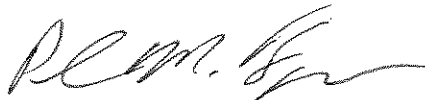
DOJ is committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public 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.

In your correspondence, you also requested to “sit down and have a recorded meeting” regarding “EXTREME civil rights violations.” This request is outside the scope of the Office of Open Government’s responsibilities. While the Office of Open Government works to increase government openness and transparency, we do so with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law. If you wish to write to DOJ regarding your civil rights concerns, your correspondence will be routed to the appropriate person to review.

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

PMF:lah



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FAX 608/267-2779

April 5, 2017

Mr. Michael Fish

Baraboo, WI 53913  
msfish43@charter.net

Dear Mr. Fish:

The Department of Justice (DOJ) is in receipt of your email, dated August 24, 2016, to Attorney General Brad Schimel in which you stated, "I'm looking for a State of Wisconsin or related type of form that i can utilize as a FREEDOM OF INFORMATION ACT in order that i can obtain information from a business or private company with respect to their privacy or company policy."

Your correspondence references the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA applies to federal agencies and helps ensure public access to records of federal agencies. In Wisconsin, the state counterpart to FOIA is 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 authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The public records law only applies to records in the custody of an authority.

The Wisconsin public records law defines an authority as any of the following having custody of a record:

a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public

Mr. Michael Fish

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Page 2

health or safety to the county or municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of “authority” is subject to the provisions of the public records law. Generally, a private business or company would not fall within this definition and thus would not be subject to this law.

In order to submit a public records request, there are no “magic words” that are required, and no specific form is permitted to be required in order to submit a request. One may submit a request verbally or in writing. 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). Under the public records law, there is no requirement that a request must be made or fulfilled in person. *See* Wis. Stat. § 19.35(1)i (“Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request”).

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.

Thank you for your correspondence. 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.

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Sincerely,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

Paul W. Connell  
Deputy Attorney General

Delanie M. Breuer  
Chief of Staff

17 W. Main Street  
P.O. Box 7857  
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

April 14, 2017

Rick deMoya  
rgdemoya@gmail.com

Dear Mr. deMoya:

This is in response to your September 27, 2016 correspondence in which you requested my assistance concerning a public records issue involving the Department of Veterans Affairs (DVA). You requested DVA provide you with copy of any emails, to and from specific employees, referencing the cancellation of the attendance of a DVA employee at a conference. You stated that DVA responded to your request by stating the timeframe for the request was unknown. You raised concerns that DVA's response was a "delay tactic to delete the requested emails." You sought my assistance "in precluding" the "deletion scenario and requesting" that DVA fulfill your public records request.

Thank you for bringing this issue to our attention. As you are likely aware, the Department of Justice (DOJ) cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DVA. However, I spoke with DVA's Office of Legal Counsel and discussed your concerns. Although we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

The public records law includes a provision concerning the destruction of requested records. Specifically, the law states that after receiving a request for inspection or copying of a record, an authority may not destroy the requested record until after the request is granted or until at least 60 days after the request is denied (90 days if the requester is a committed or incarcerated person). Wis. Stat. § 19.35(5). These time periods exclude Saturdays, Sundays, and legal holidays. Wis. Stat. § 19.345.

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



Mr. Rick de Moya  
April 14, 2017  
Page 2

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 DVA, and therefore, we respectfully decline to pursue an action for mandamus on your behalf.

You may also wish to contact a private attorney regarding your 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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(800) 362-9082  
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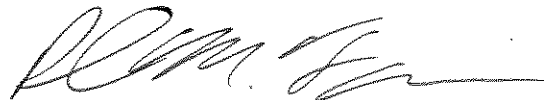
<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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, 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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: DVA Office of Legal Counsel



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April 14, 2017

Rick deMoya  
rgdemoya@gmail.com

Dear Mr. deMoya:

This is in response to your January 9, 2017 correspondence in which you requested my opinion as to whether the revised public records policy of the Department of Veterans Affairs (DVA) conformed to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. You included a link to the "Access to Records" page on DVA's website. Regarding the third bullet point concerning location fees, you stated that you "do not believe 'location fees' may include the time scanning physical documents."

The Department of Justice (DOJ) cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DVA. However, I spoke with DVA and their Office of Legal Counsel and brought your concerns to their attention. The bullet point you referenced has since been changed. Although we cannot offer you legal advice or counsel, we can provide you with some general information regarding the public records law.

Regarding an authority's fees, 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). Generally, the rate for an actual, necessary, and direct charge for staff time (such as for locating a record) should be based on the pay rate of the lowest paid employee capable of performing the task. An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).

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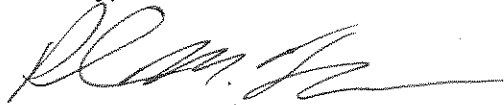
Mr. Rick de Moya  
April 14, 2017  
Page 2

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.

Thank you for your expressing your concern regarding the public records law. 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", with a long horizontal line extending to the right.

Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: DVA Office of Legal Counsel



STATE OF WISCONSIN  
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Assistant Attorney General  
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April 14, 2017

Richard Hasse  
CMSgt, USAF, Retired  
Columbia County  
Veterans Service Officer  
Richard.Hasse@co.columbia.wi.us

Dear Mr. Hasse:

This is in response to your April 6, 2017 correspondence in which you wrote, "I would like to file a formal complaint regarding cost estimate of WDVA compliance with my recent open records request." You included a copy of an email from the president of the County Veterans Service Officer Association of Wisconsin in which he summarized a conversation he had regarding the purported costs associated with complying with your request. Your correspondence did not include a direct communication from DVA regarding any fees associated with your request.

As you are likely aware, the Department of Justice (DOJ) cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DVA. However, I reached out to DVA's Office of Legal Counsel regarding your issue and discussed your concerns about costs. Although we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

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). The amount of such fees may vary depending on the authority. 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). Generally, the rate for an actual, necessary, and direct charge for staff time (such as for locating a record) should be based on the pay rate of the lowest paid

Mr. Richard Hasse  
April 14, 2017  
Page 2

employee capable of performing the task. An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).

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. It is often mutually beneficial for a requester and an authority to work with each other regarding a request. This can provide for a more efficient processing of a request by the authority while ensuring that the requester receives the records that he or she seeks.

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 DVA. Therefore, we respectfully decline to pursue an action for mandamus on your behalf.

You may also wish to contact a private attorney regarding your 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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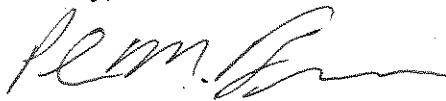
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Thank you for expressing your concerns regarding the public records law. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government.

Mr. Richard Hasse  
April 14, 2017  
Page 3

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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

Cc: DVA Office of Legal Counsel



STATE OF WISCONSIN  
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April 14, 2017

Richard Hasse  
CMSgt, USAF, Retired  
Columbia County  
Veterans Service Officer  
Richard.Hasse@co.columbia.wi.us

Dear Mr. Hasse:

This is in response to your November 1, 2016 correspondence in which you requested our office pursue a mandamus action regarding a public records request you submitted to the Department of Veterans Affairs (DVA). Specifically, you asked for our office "to determine why the responsive records . . . could not be provided in electronic format as requested in the original request." You also requested that our office investigate why the response letter from DVA, which you stated was sent to you on October 31, was dated November 9.

The Department of Justice (DOJ) cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DVA. However, I spoke with DVA and their Office of Legal Counsel regarding your concerns. Although we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

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 DVA. Therefore, we respectfully decline to pursue an action for mandamus on your behalf.

Mr. Richard Hasse  
April 14, 2017  
Page 2

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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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: DVA Office of Legal Counsel





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Paul M. Ferguson  
Assistant Attorney General  
[fergusonpm@doj.state.wi.us](mailto:fergusonpm@doj.state.wi.us)  
608/266-1221  
TTY 1-800-947-3529  
FAX 608/267-2779

April 14, 2017

Mr. Eric N. Soderlund

██████████  
Portage, WI 53901

Dear Mr. Soderlund:

The Department of Justice (DOJ) is in receipt of your July 28, 2016 correspondence to me in which you stated that you "initiated a WI Open Records Request with the WI Judicial Commission" and that you received a response that "the Commission will not provide you with any documents responsive to your request" because they are "confidential pursuant to state law." You are now requesting that DOJ "contact WI Judicial Commission Executive Director Jeremiah C. Van Hecke, to enable [you] to obtain the public records [you] requested."

The Attorney General and DOJ's Office of Open Government appreciate your concern about this issue. DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent the Wisconsin Judicial Commission. However, I contacted Executive Director Jeremiah Van Hecke and made him aware of your concerns. While we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

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 Wisconsin Judicial Commission. 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.

Mr. Eric N. Soderlund

April 14, 2017

Page 2

You may also wish to contact a private attorney regarding your 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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Sincerely,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah

Cc: Executive Director Jeremiah Van Hecke



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Paul M. Ferguson  
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fergusonpm@doj.state.wi.us  
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FAX 608/267-2779

April 18, 2017

Stephen D. Willett  
Stephen D. Willett & Associates, S.C.  
P.O. Box 89  
Phillips, WI 54555-0089

Dear Mr. Willett:

This is in response to your March 17, 2017 correspondence to Attorney General Brad D. Schimel in which you wrote about a public records request you submitted to the Department of Safety and Professional Services (DSPS). You wrote that you represent an individual who is the subject of a matter commenced by DSPS, and DSPS denied your public records request for records related to that matter. You wrote, "It is my demand that your offices enforce the open records request so we can appropriately represent our client. This is not an issue of confidentiality or protection of witnesses, it is an issue of due process and discovery."

The Attorney General and the Department of Justice (DOJ) Office of Open Government appreciate your concern regarding this matter. However, DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent DSPS. However, I reached out to DSPS Chief Legal Counsel Michael Berndt regarding your matter, and I brought your concerns to his attention. Although we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

As you are likely aware, 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, the common law, and the public records balancing test, which weighs the public interest in disclosure of a record against the public interest in nondisclosure, provide such exceptions. This balancing test is to be conducted on a case-by-case basis.

Mr. Stephen D. Willett  
April 18, 2017  
Page 2

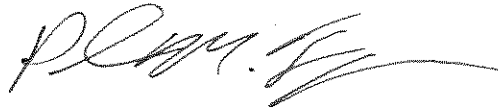
The public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). 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 DSPS. Therefore, we respectfully decline to pursue an action for mandamus on your behalf.

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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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: Michael Berndt, DSPS Chief Legal Counsel



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Paul M. Ferguson  
Assistant Attorney General  
fergusonpm@doj.state.wi.us  
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May 19, 2017

Attorney Charles D. Tobin  
Holland & Knight  
800 17th Street, Suite 1100  
Washington, DC 20006

Dear Attorney Tobin:

The Department of Justice (DOJ) is in receipt of your August 15, 2016 correspondence to Attorney General Brad Schimel regarding your client Gray Television station WSAW-TV's public record request to Merrill Area Public Schools ("the school district"). Specifically, you requested advice on the school district's decision to partially deny your client's public records request and to request that we "direct the District to furnish the subject records in their entirety."

In your letter, you express your disagreement with the school district's reasons for denying access to certain records. You expressed concerns with the school district's characterization of the "personal" nature of certain records, and its balancing test analysis, including as it relates to an "informant."

In the context of emails, the Wisconsin Supreme Court has said that purely personal records, evincing no violation of law or policy, sent or received by employees or officers on an authority's computer system are not subject to disclosure in response to a public records request. *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 9 & n.4 (Abrahamson, C.J., lead opinion), *Id.* ¶ 148 & n.2 (Bradley, J., concurring), *Id.* ¶ 173 & n.4 (Gableman, J., concurring), 327 Wis. 2d 572, 582, 786 N.W.2d 177, 183. In *Schill*, the court held 5-2 that the public records law did not require an authority to disclose such emails. Three justices reached this decision by concluding such emails were not "records"; the remaining four justices concluded the emails were "records," but two agreed they did not need to be disclosed under the balancing test. While this area of the law is unsettled, it is reasonable to conclude that a majority of the court will hold that such emails are records subject to disclosure if they take up the issue again. It is DOJ's position that purely personal emails sent or received on government email accounts are records under the public records law, and therefore, such emails are subject to disclosure.

The fact that records, including but not limited to emails, are subject to disclosure does not necessarily mean an authority must disclose them. While records are presumed to be open to public inspection and copying, there are exceptions. Wis. Stat. § 19.31. Statutes, case law, and the public records law balancing test provide such exceptions. If neither a statute nor the common law creates a general exception to disclosure, the records custodian must apply the balancing test on a case-by-case basis.

Whether an email is “purely personal” should be narrowly construed. Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010). Any content related to official duties, the affairs of government, and the official acts of the authority’s officers and employees is not purely personal. Some emails may contain some content that is purely personal and other content that relates to official functions and responsibilities. The purely personal content may be redacted, while the remaining content is subject to regular public records analysis. *See* Wis. Stat. § 19.36(6); *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 19 & n.4, 354 Wis. 2d 591, 849 N.W.2d 888 (observing that “[p]ersonal finance or health information” may be subject to redaction as “purely personal” in an email that otherwise is subject to disclosure).

In applying the balancing test, an individual’s interest in his or her privacy and reputation is a consideration. However, the public interest in protecting the privacy and reputational interest of an individual is not equivalent to the individual’s personal interest in protecting his or her own character and reputation. *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, ¶ 50, 300 Wis. 2d 290, 731 N.W.2d 240. The concern is not personal embarrassment and damage to reputation, but whether disclosure would affect any public interest. *Id.* ¶ 52.

The public records law also provides that the open meetings law’s exemptions to the requirement that a governmental body meet in open session, under Wis. Stat. § 19.85, “are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority . . . makes a specific demonstration that there is a need to restrict public access at the time that the request . . . is made.” Wis. Stat. § 19.35(1)(a). The information you provided indicates that the school district considered one such exemption in its balancing test analysis. Specifically, the school district’s June 7, 2016 letter references a “strong public interest in not disclosing personal, medical, or social histories . . . where, if disclosed, such information would have a substantial adverse impact on the individual.” This language closely mirrors that found in Wis. Stat. § 19.85(1)(f).

You also expressed concern over the school district’s reliance on protecting informants as a reason for nondisclosure. Wisconsin Stat. § 19.36(8) prohibits law enforcement agencies from releasing information identifying law enforcement informants. Wisconsin Stat. § 19.35(1)(am)2.b. prohibits disclosure of such information in the context of records released pursuant to Wis. Stat. § 19.35(1)(am), which permits access to personally identifiable information about an individual if that individual is the requester. Under the facts presented in your correspondence, it is not clear that the circumstances pertain to the type of informant envisioned in either of the above-referenced statutory provisions. It appears the school district’s balancing test analysis may have also considered factors unrelated to informants or a pledge of confidentiality.

Based on the facts presented, there is insufficient information to say whether or not the school district's balancing test determination was proper. The facts presented, including copies of certain redacted records, provide an incomplete picture. Ultimately, it is each authority and records custodian's responsibility to apply the balancing test based on the totality of the circumstances. We encourage all authorities, including the school district, to ensure that it keeps the public records law's presumption of complete public access, consistent with the conduct of government business, in the fore as it applies the balancing test to public records requests.

As you are 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 novel issues of law that coincide with matters of statewide concern. The present matter primarily concerns the application of the balancing test to a particular set of circumstances, and it does not appear to raise any novel issues of law that coincide with matters of statewide concern. 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 at this time. However, I contacted Merrill Area Public Schools Superintendent Dr. John Sample regarding this matter. I made him aware of your client's disagreement with the school district's response to the public records request, and we discussed your concerns.

DOJ appreciates your concern, and we remain 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



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June 29, 2017

Sharon Roder

[REDACTED]  
Waukesha, WI 53189  
Sharr50@yahoo.com

Dear Ms. Roder:

This letter is in response to your correspondence, dated January 10, 2017, requesting that the Attorney General investigate members of the Big Bend Trustees based on alleged violations of the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98. You also requested that the Attorney General review the decision of District Attorney Susan Oppen not to pursue your complaint against the same Trustees.

The Department of Justice (DOJ) Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. Based on the information you provided in your correspondence, it appears some of subject matter of your correspondence, including alleged harassment and intimidation, is outside this scope. However, we can address your correspondence to the extent it concerns the open meetings law.

The open meetings law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of government business. Wis. Stat. § 19.81(1). All meetings of government bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

A meeting of a governmental body exists, such that prior notice is required by law, when (1) there is a purpose to engage in government business and (2) the number of members present is sufficient to determine the governmental body's course of action. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987). A meeting does not exist where the members are gathered by chance or for social reasons. *State ex rel. Badke v. Vill. Bd. Of Greendale*, 173 Wis. 2d 553, 576, 494 N.W.2d 408 (1993). Thus, a claim that a body had violated the open meetings law would have to show not only that a quorum (or negative quorum) of the body was present, but that they were gathered for the purpose of conducting government business and not simply by chance.



Regarding the gathering of Big Bend trustees on February 27, 2014, there is insufficient information to determine whether an illegal meeting occurred. If a sufficient number of the trustees were convened for the purpose of conducting governmental business, then such a convening of members would be subject to the open meetings law's provisions, including the notice requirement. If the gathering was pre-arranged or coordinated by the trustees in advance, then any such meetings or discussions planning the February 27, 2014 gathering may also have been meetings subject to the law's provisions. Again, there is insufficient information to properly evaluate any such preliminary meetings.

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). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

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 provide notice to the public by paid publication in a news medium, the chief presiding officer must ensure that the notice is published.

Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

Ultimately, 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). For additional information on the notice requirements of the open meetings law, you may wish to read pages 13 through 18 of the Open Meetings Law Compliance Guide available through DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

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 presenting novel issues of law that coincide with matters of statewide concern. The information you provided is insufficient to determine whether the circumstances you outline present a novel issue of law that coincides with a matter of statewide concern. As a result, we respectfully decline to pursue an enforcement action at this time.

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). In this case, it

appears you filed such a complaint. 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).

Although you are disappointed with the district attorney's decision regarding your complaint, the law also does not require a district attorney to commence an enforcement action upon receipt of a written request to do so. See Wis. Stat. § 19.97(4). 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).

You may wish to contact a private attorney regarding this matter. It appears you may have an attorney, but if you do not, 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:

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

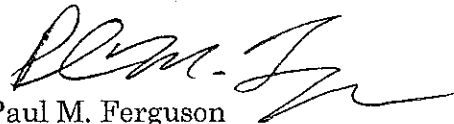
<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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 Open Meetings Law, maintains an 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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:pjm

Cc: District Attorney Susan Opper  
Village Attorney for Big Bend, John Schober