

2017 4th Quarter Correspondence

Index

	Page
Open Meetings – meeting agenda, notice requirements	2
Public Records – no record exists	4
Public Records – timeframe for response, reasons for denial, no record exists	13
Public Records – balancing test	16
Public Records – no record exists, statute of limitations for mandamus action, record retention	18
Open Meetings – meeting minutes, notice requirements	21
Public Records – enforcement options	24
Public Records – incarcerated requestor, no record exists, record retention	26
Public Records – fees, public records are not subject to copyright protection	29
Public Records – no record exists	31
Public Records – balancing test, attorney-client privilege	33
Public Records – timeframe for response, reasons for denial, no record exists, writ of mandamus	36
Public Records – incarcerated requestor, definition of record, balancing test	39
Open Meetings – notice requirements	42
Open Meetings – notice requirements, verified complaint	45
Open Meetings – closed session requirements, meeting minutes, verified complaint	48
Public Records – balancing test, ongoing investigation or litigation, prosecutor’s files	52
Open Meetings – notice requirements, “good cause,” no requirement for a public comment period	55



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

October 2, 2017

Chris Martinson

[REDACTED]
New London, WI 54961

Dear Mr. Martinson:

This letter is in response to your correspondence to Attorney General Brad Schimel, received April 24, 2017, regarding your concerns that the New London Board of Education's "agenda policy is not in compliance with Wisconsin's open meetings statute(s)." According to the policy, the board's president and the district administrator prepare the agendas for the board's meetings.

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with conducting government business. Wis. Stat. § 19.81(1). All meetings of government bodies shall be held publically 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).

While the open meetings law governs public access to meetings of governmental bodies, it does not dictate all procedural aspects of how bodies run meetings. The law provides for the level of specificity required in agenda items for open meetings as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). However, the law does not specify requirements for the process that governmental bodies use to adopt meeting agendas. So long as governmental bodies follow the requirements for adequate and timely notice to the public, the notice complies with the open meetings law.

The open meetings law requires that 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.

Chris Martinson
October 2, 2017
Page 2

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. Wis. Stat. § 19.84(3). 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).

Public notice of a meeting must provide the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session.” Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* For additional information on the notice requirements of the open meetings law, please see 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>).

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, maintains the Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

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:acg: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

October 2, 2017

Rosemarie Annonson

[REDACTED]
Oak Creek, WI 53154

Dear Ms. Annonson:

This letter is in response to your January 18, 2017 email correspondence requesting "assistance of corporation council in obtaining the proposal" relating to the development of a Woodman's Food Market. You stated that you requested a copy of the proposal but the "clerk denied" your request. I was one of several recipients of your email; I was also copied on several other related emails that you sent.

In February 2017, I communicated with Milwaukee County Assistant Corporation Counsel Julie Wilson regarding your correspondence. I am enclosing a copy of a February 15, 2017 letter from Milwaukee County Assistant Corporation Counsel Julie Wilson to you on which I was copied. Based on the information available to me, it appears that the records you requested did not exist.

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. Although it is not required under the law, it appears that the City Clerk informed you by email, dated December 21, 2016, that there "is no proposal for this item."

It appears an initial response to your public records request gave the impression that responsive records existed. This issue is explained in Attorney Wilson's letter. The Office of Open Government encourages authorities and requesters to maintain an open line of

Rosemarie Annonson
October 2, 2017
Page 2

communication. This helps to avoid misunderstandings between an authority and a requester. Improved communication could possibly have avoided the misunderstanding that appears to have occurred initially in this situation.

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). (As you are aware, in Milwaukee County, the Milwaukee County Office of Corporation Counsel—not the district attorney—serves as legal counsel for the purposes of enforcement of the public records law.) 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—you specifically requested the corporation counsel's assistance—nonetheless, we respectfully decline to pursue an action for mandamus on your behalf at this time.

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:

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>

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. 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.

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.

Rosemarie Annonson
October 2, 2017
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:acg:lah

Enclosure

cc: Assistant Corporation Counsel Julie Wilson



OFFICE OF CORPORATION COUNSEL

MARGARET DAUN
Acting Corporation Counsel

COLLEEN A. FOLEY
PAUL D. KUGLITSCH
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
MOLLY J. ZILLIG
ALAN M. POLAN
DEWEY B. MARTIN
JAMES M. CARROLL
KATHRYN M. WEST
JULIE P. WILSON
CHRISTINE L. HANSEN
CARRIE THEIS
Assistant Corporation Counsel

February 15, 2017

Via mail and email to spit_fires@hotmail.com

Rosemarie Annonson

[REDACTED]
Oak Creek, WI 53154

Re: Complaint regarding City of Oak Creek Public Records Responses

Dear Ms. Annonson:

On January 18, 2017, you emailed Acting Corporation Counsel Margaret Daun regarding concerns that the City of Oak Creek, through its City Clerk, failed to appropriately respond to your public records requests. You indicated that an item included on the agenda of the December 20, 2016 City Council meeting concerned a closed session under Wis. Stat. § 19.85(1)(e) "to discuss the terms of a proposed development agreement, including a TIF incentive grant, for property owned by Woodman's Food Market, Inc. consisting of approximately four acres located at 8142 South 6th Street." You further indicated that you requested a copy of the proposal, but that the City Clerk failed to provide it.

On January 27, 2017, you forwarded to Acting Corporation Counsel Daun a string of emails concerning the request for the development proposal, as well as an unrelated request for Oak Creek Health Department data. In that correspondence, you expressed concern that the City Clerk was incorrectly applying the law by denying you all closed session materials, including the development proposal. Your January 27, 2017 correspondence did not include the actual records request or denial relating to the proposal.

We investigated this matter with the City of Oak Creek. Attached is a string of emails we received regarding your request. These records demonstrate that you made your request for a copy of the proposal on the morning of Monday, December 19, 2016. That evening, at 6:47 p.m., the Deputy City Clerk advised that no items relating to the closed session would be released at that time. That evening, at 7:21 p.m., you clarified that you were seeking only the application for the proposed development and not any items relating to the proposed TIF development incentive. You followed-up with the City Clerk on Tuesday, December 20, 2016 at 8:05 a.m. The City Clerk responded the same day at 3:09 p.m. to advise that "There is no application related to this item to provide." She responded again on Wednesday, December 21, 2016 at 12:49 p.m. to state that "There is no proposal for this item." We have similarly been advised that there is no record responsive to your request.

As recommended by the Wisconsin Attorney General, the first step in analyzing any records request is to determine whether any responsive record exists. If no responsive record exists, no

further analysis is required. In fact, a records authority is not required to tell a requester that a record does not exist, even if "it might be a better course to inform a requester that no record exists." *Journal Times v. City of Racine Bd. of Police & Fire Comm'rs*, 2015 WI 56, ¶ 102, 362 Wis. 2d 577, 866 N.W.2d 563. A custodian should tell a requester if no responsive record exists. Cf. *State ex rel. Zinngrabe v. Sch. Dist. of Sevastapol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988).

Here, within 48 hours of your request, the City Clerk advised you that there is no proposal or application responsive to your request. This was a timely and appropriate response in our view.

To the extent any confusion was created by the Deputy City Clerk's initial response that closed session materials would not be provided before the meeting – which might have been read to mean that a proposal responsive to your request in fact exists – it should have resolved quickly upon the City Clerk's prompt response that no responsive record exists.

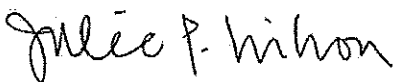
Moreover, if the Deputy Clerk's message created any confusion, that alone is not actionable in our view. If this Office pursued a mandamus action on your behalf, the relief to be sought would be an order directing release of the records. Based on our investigation, this matter appears unlikely to satisfy the prerequisites to mandamus relief:

In order to obtain a writ of mandamus compelling disclosure of records, the petitioner must establish that four prerequisites are satisfied: (1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law.

Watton v. Hegerty, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369 (footnote omitted) (citing *State ex rel. Greer v. Stahowiak*, 2005 WI App 219 ¶ 6, 287 Wis. 2d 795, 706 N.W.2d 161; and *Pasko v. City of Milwaukee*, 2002 WI 33, ¶ 24, 252 Wis. 2d 1, 643 N.W.2d 72).

Accordingly, the Office of Corporation Counsel will not take action on your complaint and will close our file at this time. We thank you for your interest in promoting open government. If you disagree with our conclusion, you may pursue the other avenues for relief available to you pursuant to Wis. Stat. §§ 19.37(1).

Sincerely,



JULIE P. WILSON

Enclosures

cc: Melissa Karls, City Attorney, City of Oak Creek (via email)
Paul Ferguson, Wisconsin Department of Justice (via email)
Bruce Landgraf, Milwaukee County District Attorney's Office (via email)

Catherine Roeske

From: Catherine Roeske
Sent: Wednesday, December 21, 2016 12:49 PM
To: 'Rosemarie Annonson'
Subject: RE: OPEN RECORDS request for Development Proposal, Woodmans with Tif Incentive

Rosemarie,

There is no proposal for this item.

Catherine

Catherine A. Roeske
414-766-7023- Direct
414-766-7000- Main
City Clerk, City of Oak Creek
8040 South 6th Street
Oak Creek, Wisconsin 53154



From: Rosemarie Annonson [mailto:spit_fires@hotmail.com]
Sent: Tuesday, December 20, 2016 9:21 AM
To: Catherine Roeske <croeske@oakcreekwi.org>
Subject: Re: OPEN RECORDS request for Development Proposal, Woodmans with Tif Incentive

Where is the proposal For Development?
This is what I want.

From: Catherine Roeske <croeske@oakcreekwi.org>
Sent: Tuesday, December 20, 2016 3:09 PM
To: Rosemarie Annonson; Christa Miller
Cc: Melissa L Karls
Subject: RE: OPEN RECORDS request for Development Proposal, Woodmans with Tif Incentive

Rosemarie,

There is no application related to this item to provide.

Sincerely,
Catherine

Catherine A. Roeske
414-766-7023- Direct
414-766-7000- Main
City Clerk, City of Oak Creek
8040 South 6th Street
Oak Creek, Wisconsin 53154



From: Rosemarie Annonson [mailto:spit_fires@hotmail.com]
Sent: Tuesday, December 20, 2016 8:05 AM
To: Catherine Roeske <croeske@oakcreekwi.org>; Christa Miller <cmiller@oakcreekwi.org>
Cc: Melissa L Karls <MKarls@haskinkarls.com>; Bruce Landgraf DA <bruce.landgraf@da.wi.gov>
Subject: OPEN RECORDS request for Development Proposal, Woodmans with Tif Incentive

Catherine,

Yesterday I sent in an open records for the proposal for development of four acres of property at Drexel Square. My request was denied as the proposal and tif incentive were on the agenda for tonight's meeting in closed session. Although all the documents going into closed session may not be open to the public as related to elements of collective bargaining the original proposal should be. IF any parts are deemed not those can be redacted. Please remit the proposal today before the meeting.

Rosemarie

From: Rosemarie Annonson <spit_fires@hotmail.com>
Sent: Monday, December 19, 2016 7:21 PM
To: Christa Miller
Cc: Melissa Karls
Subject: Re: Catherine OUT? Until when?

Hello Christa,

I am not requesting the packet that may contain info on the proposed tif development incentive I am requesting at this time, only the application for proposed development. This document should be available to the public under WI. Stats. Ch 19.36 (6). Any competitive bargaining elements that may be in the proposal that require a closed session could be redacted if the proposal contains elements that are considered open.

I've cc to Melissa to save time considering the meeting is tomorrow and my desire to have the document, today.

Thank You,
Rosemarie

From: Christa Miller <cmiller@oakcreekwi.org>
Sent: Monday, December 19, 2016 6:47 PM
To: Rosemarie Annonson
Cc: Catherine Roeske
Subject: RE: Catherine OUT? Until when?

Catherine will be in the office tomorrow.

As for the item you are requesting, that is a closed session item, and therefore, no item may be released at this time.

Thank you.

Christa Miller, WCMC
Deputy City Clerk
City of Oak Creek
Phone: 414-766-7000
population: 34,791
cmiller@oakcreekwi.org

**** Our new address is 8040 S. 6th Street, Oak Creek, WI 53154 ****

**** City Hall Hours are 7:30 a.m. to 4:00 p.m. ****

From: Rosemarie Annonson [mailto:spit_fires@hotmail.com]
Sent: Monday, December 19, 2016 12:23 PM
To: Christa Miller
Subject: Catherine OUT? Until when?

Christa,

I sent Catherine an open records this morning and got back an out of office auto response. I'm looking for the following could you send?

Could you please remit the original proposal application?

b. Section 19.85(1Xe) to discuss the terms of a proposed development agreement, including a TIF incentive grant, for property owned by Woodman's Food Market, Inc. consisting of approximately four acres located at 8142 South 6th Street.

It's on the agenda for tomorrow for closed session.

Rosemarie

The City of Oak Creek is subject to Wisconsin Statutes related to public records. Unless otherwise-exempted from the public records law, senders and receivers of City email should presume that this email message is subject to release upon request, and to state records retention requirements.

The City of Oak Creek is subject to Wisconsin Statutes related to public records. Unless otherwise exempted from the public records law, senders and receivers of City email should presume that this email message is subject to release upon request, and to state records retention requirements.



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

October 5, 2017

Sharon Johnson-Visor

[REDACTED]
Sun Lakes, AZ 85248

Dear Ms. Johnson-Visor:

The Department of Justice (DOJ) is in receipt of your December 5, 2016 correspondence in which you stated that you are writing to "bring a mandamus action for the Division of Quality Assurance to either release a complete copy of all records obtained from their investigation on my complaint with The Villa of Lincoln Park . . . or provide denial with legal reason." Your correspondence followed a November 2016 telephone call you placed to DOJ's Office of Open Government Public Records-Open Meetings help line.

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, as I mentioned to you in our telephone conversation in November, DOJ cannot offer you legal advice or counsel concerning your public records request as DOJ may be called upon to represent the Department of Health Services (DHS) Division of Quality Assurance (DQA). Nevertheless, in November 2016, I spoke with DQA regarding your issue. I also contacted Gina Bertolini at DQA regarding your written correspondence.

The Office of Open Government works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law and the Wisconsin Public Records Law. While a portion of your correspondence pertained to the public records law, it also discussed a matter outside the scope of the Office of Open Government's responsibilities. As a result, we are unable to offer you assistance or insight regarding that other matter. However, I am copying DHS Deputy Administrator Shari Kelssig on this response so that she is aware of your continued concerns.

Although I cannot offer you legal advice or counsel regarding your public records issue because DOJ may be called upon to represent DQA, I would like to offer you some general information about the public records law that you may find helpful.

The Wisconsin 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”).

Pursuant to Wis. Stat. § 19.35(4)(b), “If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request.” Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that “if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney.” Wis. Stat. § 19.35(4)(b).

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

The 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 explained, DOJ may be called upon to represent DQA, therefore, 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:

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/Iris.aspx>

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 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

cc: Shari Kelssig, Deputy Administrator, Department of Human Services



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

October 9, 2017

Gretchen Schuldt
Wisconsin Justice Initiative
Post Office Box 100705
Milwaukee, WI 53210

Dear Ms. Schuldt:

The Wisconsin Department of Justice (DOJ) is in receipt of your January 30, 2017 correspondence to Attorney General Brad Schimel in which you stated that the “decision in *Democratic Party of Wisconsin v. Wisconsin Department of Justice* (2016 WI 100) raises many questions about the applicability of the Public Records law that an opinion from your office would help clarify.” You asked a number of questions regarding the effect of the court’s holding.

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 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 authority’s 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. The protection of prosecutorial techniques and police strategies and the protection of crime victims are examples of public policies for consideration in applying the balancing test to a particular record. It should be noted that the public records balancing test must be applied on a case-by-case basis.

Gretchen Schuldt
October 9, 2017
Page 2

In addition to your questions regarding the court's decision, you also asked about the status of a memorandum from former Attorney General J.B. Van Hollen that was referenced in the dissent. That document is the Memorandum from J.B. Van Hollen, Wisconsin Attorney General, to Interested Parties (Apr. 27, 2012). As stated at the conclusion of that document, it is not a formal opinion of the Attorney General; it is intended to provide guidance and advice to members of the public pursuant to Wis. Stat. § 19.39. This document continues to serve that purpose, and it remains accessible to the public via the "Resources" tab on DOJ's Office of Open Government webpage.

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 over a horizontal line.

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

October 6, 2017

Darla Meyers

[REDACTED]
Hudson, WI 54016

Dear Ms. Meyers:

This letter is in response to your correspondence, dated July 17, 2017, requesting DOJ's advice regarding the Hudson School District's denial of your public records request. You stated, "I specifically asked for the names of school district personnel that may have violated the Establishment clause" regarding a matter. You did not provide details about the nature of this matter, but you did link to a two page document with a "Hudson Schools" logo that concerned a "review of potentially controversial curriculum" from which you also provided an excerpt.

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. It is unclear from the information you provided what records you requested and the school district's response. As a result, I cannot properly evaluate your matter. However, I am providing some general information about the public records law that you may find helpful.

The public records law 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).

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. It is unclear from the information presented whether your matter raises 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 your 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/ineedalawyer/pages/lris.aspx>

Following the submission of your correspondence, it is my understanding that you contacted our office with concerns about the statute of limitations and the destruction of records. Regarding the statute of limitations, except for committed and incarcerated persons, 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). Regarding the destruction of records, 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 are found in Wis. Stat. §§ 16.61 (for state agencies) and 19.21 (for local units of government). Although the public records law addresses the duty to provide access to 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, 2007 WI App 238, 306 Wis. 2d 247, 742 N.W.2d 530 (citing Wis. Stat. § 19.35(5)) (citation omitted). The duty to retain records is governed by the records retention statutes and record retention schedules created pursuant to those statutes. For more information on record retention, you may wish to visit the Wisconsin Public Records Board website at <http://publicrecordsboard.wi.gov/>.

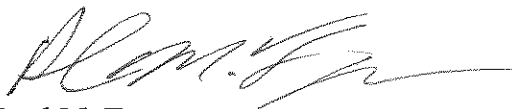
The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).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

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

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:acg



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

October 9, 2017

Nancy Lader

[REDACTED]
Milton, WI 53563

Dear Ms. Lader:

The Wisconsin Department of Justice (DOJ) is in receipt of your March 10, 2017 and April 18, 2017 correspondence to me regarding your questions concerning the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98.

In your March 10, 2017 correspondence, you asked me to "clarify a way to audit / attend various committee meetings." You provided that you are concerned as "a citizen who (by virtue of being elected to be a non partisan Alderperson) has lost the right to attend a public governmental meeting." Your correspondence included a copy of a December 13, 2016 letter to the City of Milton Common Council from Attorney Mark A. Schroeder of the Consigny Law Firm written following the issuance of DOJ's July 26, 2016 letter to Winnebago County. A partial copy of the latter was included with your correspondence; a complete copy of this letter is enclosed. The purpose of DOJ's July 26, 2016 letter was not to discourage members of governmental bodies from attending meetings of other governmental bodies. The purpose of the letter was to clarify the law and make members of governmental bodies aware of their obligations to ensure compliance with the open meetings law in instances where members of one body attend the meetings of another body. Planning and communication are keys to ensuring compliance in such situations. If Attorney Schroeder or any members of the common council wish to discuss the content of the letter, they are welcome to contact me via the Office of Open Government's Public Records Open Meetings (PROM) Help Line at (608) 267-2220.

You also provided that you attend the "City / Township Joint Fire Department" meetings and that the "minutes taken at that meeting do not reflect much of the discussion that is ongoing." In an effort to increase transparency, DOJ recommends that governmental bodies keep minutes of all meetings. However, there is no requirement under the open meetings law for a governmental body to do so. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). Meeting minutes are a common method that governmental bodies use to do so. However, as long as the governmental body is maintaining some type of record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied.

Nevertheless, a governmental body may choose to go beyond these requirements. More detailed minutes is one way in which a governmental body can increase transparency.

In your April 18, 2017 correspondence, you raised three questions. I will address each of your questions below.

Your first question concerns the July 19, 2016 meeting agenda and minutes of the Milton City Council. You wrote, "The agenda did not clearly explain that I would be charged with an Ethics violation that had been filed." You asked, "How does the lack of identification of the actions in item 8 comply with Open Records?" Public notice of a meeting must provide the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session." Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* This reasonableness standard "requires a case-specific analysis" and "whether notice is sufficiently specific will depend upon what is reasonable under the circumstances." *State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, ¶ 22, 301 Wis. 2d 178, 732 N.W.2d 804. DOJ cannot make a factual determination. However, in making such a determination, the factors to be considered include: "[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate." *Id.* ¶ 28. For additional information on the notice requirements of the open meetings law, please see 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>).

In your second question, you requested the "Office of Open Government review Ordinance 417." The assistance you seek is outside the Office of Open Government's scope. 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. As a result, we are unable to offer you assistance or insight regarding your question related to Ordinance 417, which establishes a code of ethics for the officials and employees of the City of Milton. You may wish to contact legal counsel regarding your concerns.

You wrote that your third question was about timing, but you did not ask a question. Based on the information you provided, I am unable to determine what specific question you have. If you have a specific question, you may write to us at any time or you may contact our PROM Help Line at (608) 267-2220.

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. Your correspondence posed various questions, and you did not specifically request the Attorney General to file an enforcement action. Nonetheless, 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). 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).

You may also wish to contact a private attorney regarding this matter. Based on the information you provided, it appears you may already be represented by counsel. However, for your information, 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 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>

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, maintains an Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

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:acg:lah

Cc: Attorney Mark A. Schroeder



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

November 17, 2017

James W. Oberly
Professor of History
University of Wisconsin-Eau Claire
713 Hibbard Hall
Eau Claire, WI 54702-4004
joberly@uwec.edu

Dear Mr. Oberly:

This letter is in response to your October 19, 2017 telephone message and email correspondence to me in which you requested "review of a pair of denials that UW-Eau Claire made to open records requests [you] filed" for the College and University Professional Association for Human Resources "Data on Demand" reports.

The Attorney General and the Department of Justice's (DOJ) 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 requests as DOJ may be called upon to represent the University of Wisconsin-Eau Claire, which is part of the University of Wisconsin System. However, I spoke with the University of Wisconsin System Office of Legal Counsel (OGC) regarding your matter. I informed the OGC of your concerns regarding the university's response to your public records requests.

Although I cannot provide you legal advice or counsel regarding your matter, I can inform you that the public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. 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-Eau Claire, therefore, the Attorney General respectfully declines to take any action in this matter, including filing an action for mandamus on your behalf, at this time.

James W. Oberly
November 17, 2017
Page 2

Although we are declining to pursue an action for mandamus in this instance, the other remedies outlined above may still be available to you. You may also wish to contact a private attorney regarding your public records 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:

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 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.

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

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

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

Cc: University of Wisconsin System Office of Legal Counsel



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

November 20, 2017

Charles Downing, #99690
New Lisbon Correctional Institution
P.O. Box 4000
New Lisbon, WI 53950-4000

Dear Mr. Downing:

This letter is in response to your correspondence, dated August 2, 2017, requesting that Attorney General Brad Schimel assist you in obtaining evidence from the Dane County District Attorney's office. You stated that you wrote to the DA's office twice but have not received any response. You ask the Attorney General to "[a]sk the DA for the documents."

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, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. Based on the information you provided in your correspondence, it appears much of the subject matter of your correspondence is outside this scope. However, we can address your correspondence to the extent it concerned the public records law.

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.

An authority cannot fulfill a request for a record if the authority has no such record. "[T]he 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 Bd. of Police & Fire Comm'rs*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; 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 is not required to create a new record by

extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also* *George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). 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.

Records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. Regarding record retention, the public records law states, in part,

No authority may destroy any record at any time *after the receipt of a request* for inspection or copying of the record . . . until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

Wis. Stat. § 19.35(5) (emphasis added). The public records law is silent as to the destruction of records when no request has been made.

The general statutory requirements for record retention by state agencies and local units of government are found in Wis. Stat. §§ 16.61 and 19.21, respectively. 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 to retain records is governed by the records retention statutes and record retention schedules created pursuant to those statutes. For more information on record retention, you may wish to visit the Wisconsin Public Records Board website at <http://publicrecordsboard.wi.gov/>.

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. Your public records issue does not appear to concern novel issues of law that coincide with matters of statewide concern. Therefore, we respectfully decline to pursue an action for mandamus on your behalf at this time.

You may wish to contact a private attorney regarding your public records matter or your other concerns that are outside the OOG's scope. The State Bar of Wisconsin operates

Charles Downing, #99690
November 20, 2017
Page 3

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:

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>

The Attorney General and the OOG 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 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:acg:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMMEL
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

December 14, 2017

Attorney Dustin Brown
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
Post Office Box 2719
Madison, WI 53701-2719

Dear Mr. Brown:

The Wisconsin Department of Justice (DOJ) is in receipt of your December 9, 2016 correspondence to me in which you stated that your client, Data Abstract Solutions, Inc. (DAS), purchases title records from the Milwaukee County Register of Deeds in order to “perform title plant maintenance in the Milwaukee market.” Before providing copies to DAS, the Register of Deeds is requiring that the “documents be stamped with a watermark that purports to license them to DAS and prohibit redistribution.” You requested an “opinion from the Wisconsin Attorney General as to whether county registers of deeds can limit the redistribution of public records in this manner—in particular where the records are to be used in support of title opinions.” I have also reviewed correspondence dated March 3, 2017 from Milwaukee County Assistant Corporation Counsel James Carroll and your March 27, 2017 reply correspondence.

The Attorney General and the Department of Justice (DOJ) Office of Open Government appreciate your concern for open government and your request for an opinion. 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.

Nonetheless, I can provide you with some general guidance regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, pursuant to Wis. Stat. § 19.39. Please note that your questions center on the interpretation of Wis. Stat. § 59.43, which is outside the public records law and outside the scope of the Attorney General’s authority under Wis. Stat. § 19.39. Consequently, I am precluded from addressing this subject matter other than the limited discussion below.

Attorney Dustin Brown
December 14, 2017
Page 2

The provision of the public records law governing permissible fees provides that an authority may impose a fee for copies of a record that do not exceed "the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law." Wis. Stat. § 19.35(3)(a). Wisconsin Stat. § 59.43(2)(b) specifically establishes fees for copies of records or papers received from county registers of deeds. Wisconsin Stat. § 59.43(2)(c) authorizes registers of deeds to enter into contracts for fees "which in no event shall be less than cost of labor and material plus a reasonable allowance for plant and depreciation of equipment used." The Attorney General opinion referenced in the parties' correspondence, OAG 01-03, discusses Wis. Stat. § 59.43 at length. This opinion remains valid.

Regarding the issue of redistribution of public records, public records are public and are not subject to copyright protection. In fact, the public records law's definition of a "record" does not include "materials to which access is limited by copyright." Wis. Stat. § 19.32(2). Generally, an authority cannot limit or otherwise control the redistribution of records released in response to a public records request. Requesters can redistribute public records as they see fit because public records are public. *See Voces De La Frontera, Inc. v. Clarke*, 2017 WI 16, ¶ 34 n. 20, 373 Wis. 2d 348, 891 N.W.2d 803 ("If the information can be accessed by one party, then it can be obtained by any other organization or individual that seeks the same information.") Whether, pursuant to Wis. Stat. § 59.43(2)(c), a register of deeds can limit redistribution of records other than those used in support of title opinions is discussed in OAG 01-03. DOJ cannot make a determination as to whether a title plant created by your client is related to the support of title opinions contemplated by OAG 01-03.

Regarding the watermark issue discussed in your March 27, 2017 correspondence, the public records law provides that an authority must provide the requester "with a copy substantially as readable as the original." Wis. Stat. § 19.35(1)(b). It is possible that a court could find that a watermark or other similar marking could render a requested record not substantially as readable as the original. However, such a determination would depend on the facts of a particular case. A court's determination on this issue could be distinct from its determination as to whether a limitation on redistribution of a public record is valid under Wis. Stat. § 59.43(2)(c).

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:acg:lah

cc: Assistant Corporation Counsel James Carroll



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMMEL
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

December 19, 2017

Michael Kinney

Wisconsin Rapids, WI 54494

Dear Mr. Kinney:

This letter is in response to your email correspondence, dated May 14, 2017 and August 13, 2017, regarding your public records requests to the Wood County District Attorney's Office and Sheriff's Department. You were told that they did not have the requested records but you believe "[t]his is false." You requested that "the Attorney General help in enforcing compliance" with your public records requests.

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). 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. In this case, it appears that the Wood County Sheriff's Department and District Attorney's Office informed you that they had no records responsive to your 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 records. Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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. Based on the facts presented, your matter 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 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'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

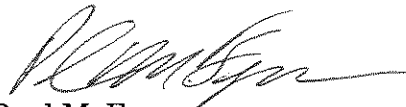
<http://www.wisbar.org/forpublic/inedalawyer/pages/lris.aspx>

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.

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:acg: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

December 19, 2017

Gilbert Rasmussen
jenashfawkes@hotmail.com

Dear Mr. Rasmussen:

This letter is in response to your email correspondence to Attorney General Brad Schimel, received on March 16, 2017, in which you requested assistance in obtaining materials that were not released in response to your public records request that you submitted to Sawyer County. You stated that the records were withheld based on the county's claim of attorney-client privilege and work product exemptions.

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." 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).

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).

Attorney-client privileged communications are not subject to disclosure under the public records law. *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-83, 546 N.W.2d 143 (1996); Wis. Stat. § 905.03(2). Attorney work product is a statutory and common-law exception to disclosure. See Wis. Stat. § 19.35(1)(a); see also *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27-28, 305 Wis. 2d 582, 740 N.W.2d 177 ("The

common law long has recognized the privileged status of attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation.”); Wis. Stat. § 804.01(2)(c)1. The Department of Justice (DOJ) has inadequate information to evaluate whether the county’s reasons for denying your request are sufficient.

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

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 public records issue that you raised does not appear to raise novel issues of law that coincide with matters of statewide concern. Therefore, 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’s 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>

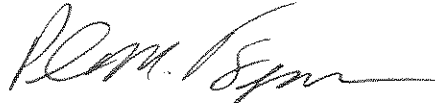
The Attorney General and the OOG are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, maintains a Public Records Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

Gilbert Rasmussen
December 19, 2017
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", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:acg: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

December 20, 2017

Jeffery Lakela

████████████████████
Prescott, WI 54021

Dear Mr. Lakela:

The Wisconsin Department of Justice (DOJ) is in receipt of your May 9, 2017 correspondence to Attorney General Brad Schimel in which you requested "an action for mandamus asking a court to order release of the records that [you] requested" from the Prescott Police Department.

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.

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").

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819,

Jeffery Lakela
December 20, 2017
Page 2

824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

It appears from your correspondence that the Prescott Police Department does not have the records you seek. You wrote, "The Prescott Police department did finally reply via e-mail, to indicate that they do not have any videos of the 'incident.'" 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.

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

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. Based on the information presented, your matter 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.

Although we are not pursuing an action for mandamus in this matter, I contacted Prescott Police Department Interim Chief of Police Rob Funk, and we discussed your matter. Interim Chief Funk reiterated that the police department did not have records responsive to your request. It is also my understanding that you filed an action for mandamus in Pierce County regarding this matter, and that the court dismissed the matter.

In your correspondence, you indicated that you have an attorney. You may wish to contact him or her regarding this matter. If you no longer have an attorney, 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:

Jeffery Lakela
December 20, 2017
Page 3

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>

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.

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: Interim Police Chief Rob Funk, Prescott Police Department



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

December 20, 2017

Mr. Demonta Hambright, #413956
Racine Correctional Institution
Post Office Box 900
Sturtevant, WI 53177

Dear Mr. Hambright:

The Wisconsin Department of Justice (DOJ) is in receipt of your May 1, 2017 and May 24, 2017 correspondence to Attorney General Brad Schimel in which you requested assistance in obtaining phone recordings between you and your wife. Your request to the Milwaukee County Sheriff's Office for these phone recordings was denied.

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, it appears the records you requested contain specific references to you, therefore, you may request them pursuant to the public records law.

Pursuant to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, a "record" is 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 tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved.

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 authority's records

Mr. Demonta Hambright, #413956
December 20, 2017
Page 2

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. It should be noted that the public records balancing test must be applied on a case-by-case basis.

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

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found,¹ 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. I interpret your correspondence as a request for the Attorney General to file an action for mandamus. However, there is insufficient information to determine whether your matter presents novel issues of law that coincide with matters of statewide concern. Therefore, 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 at this time, I contacted the Milwaukee County Corporation Counsel's Office regarding your public records request. I discussed your matter with Assistant Corporation Counsel Julie Wilson and made her aware of your concerns. Assistant Corporation Counsel Wilson invites you to contact the Milwaukee County Sheriff's Office if you have continued concerns.

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:

¹ In Milwaukee County, the Milwaukee County Office of Corporation Counsel—not the district attorney—serves as legal counsel for the purposes of enforcement of the public records law.

Mr. Demonta Hambright, #413956
December 20, 2017
Page 3

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>

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. 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.

Per your request, we are returning your denial letter from the Milwaukee County Sheriff's Department to you.

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

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

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

Enclosure

Cc: Julie Wilson, Milwaukee County Assistant Corporation Counsel



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

December 20, 2017

Sonia Miller

[REDACTED]
Middleton, WI 53562

Dear Ms. Miller:

This letter is in response to your correspondence to the Department of Justice (DOJ), dated July 5, 2017, in which you stated that the Town of Bass Lake "does not publish agendas for meetings until last minute or not at all" and "they are not providing proper notice."

In your correspondence, you did not provide details regarding your concerns. As a result, the information provided is insufficient to properly evaluate the issues you raised. Although it does not appear from your correspondence that you are asking a question or requesting the help of the Attorney General at this time, I would like to provide you with some general information about the open meetings law.

The Wisconsin 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 governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publically 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).

The open meetings law requires that 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.

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

Sonia Miller
December 20, 2017
Page 2

may the notice be less than two hours in advance of the meeting. Wis. Stat. § 19.84(3). 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).

Public notice of a meeting must provide the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session." Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* For additional information on the notice requirements of the open meetings law, please see 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. There is insufficient information to determine whether your matter presents novel issues of law that coincide with matters of statewide concern. As a result, while you did not specifically request the Attorney General to file an enforcement action, nonetheless, 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). 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).

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/ineedalawyer/pages/lris.aspx>

Sonia Miller
December 20, 2017
Page 3

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, maintains an Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

Thank you for your correspondence. DOJ appreciates your concern. 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 "P. M. Ferguson", written over a horizontal line.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:acg:lah

cc: Justin Hall, Chairman, Town of Bass Lake Board



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

December 20, 2017

Larry Last

[REDACTED]
Oshkosh, WI 54902

Dear Mr. Last:

This letter is in response to your online submission to the Department of Justice (DOJ), dated May 23, 2017, in which you asked how, or to whom, to file a complaint regarding changes to a county resolution "that was changed after being presented in formal county board meeting without notification of changes and/or amendment approval." You stated that you "feel corporate counsel is covering this issue to protect either a director or supervisor" and "[t]his appears to be a fraudulent attempt to move forward a resolution."

The Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this 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 OOG is only authorized to provide assistance within this scope. In your correspondence, you did not provide details regarding your concerns. As a result, the information provided is insufficient to properly evaluate the issues you raised. Additionally, based on the limited information you provided, it appears some of the subject matter of your correspondence is outside the OOG's scope. Therefore, the OOG cannot provide assistance regarding such subject matter. However, I can provide you with some general information about the open meetings law that you may find helpful.

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 governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publically 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).

The open meetings law requires that 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.

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. Wis. Stat. § 19.84(3). 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).

Public notice of a meeting must provide the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session.” Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* For additional information on the notice requirements of the open meetings law, please see 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. There is insufficient information to determine whether your matter presents novel issues of law that coincide with matters of statewide concern. As a result, while you did not specifically request the Attorney General to file an enforcement action, nonetheless, 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). 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).

Under the open meetings law, the district attorney cannot act to enforce the law unless he or she receives a verified complaint. Therefore, to ensure the district attorney has the authority to enforce the law, you must file a verified complaint. This also ensures that you have the option to file suit should the district attorney refuse or otherwise fail to commence an enforcement action, as explained in the previous paragraph. For further information, please see pages 29-30 of the Open Meetings Law Compliance Guide and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a template for a verified open meetings law complaint.

Larry Last
December 20, 2017
Page 3

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:

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/inneedalawyer/pages/lris.aspx>

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, maintains an Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

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



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

December 27, 2017

Lawrence Quillin

La Crosse, WI 54601

Dear Mr. Quillin:

This letter is in response to your correspondence to the Wisconsin Department of Justice (DOJ), dated May 31, 2017, regarding closed sessions of the Shelby Town Board. You wrote that the "Town of Shelby Board continually goes into Closed Session regarding topics critical to residents like zoning, annexation, board size, conflict of interest, incomplete meeting minutes, accident reports, etc." and asked "[h]ow can I get information to help me defend myself against this monopoly?"

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, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. Your correspondence raised certain issues—for example, zoning and conflicts of interest—outside of this scope. As a result, we are unable to offer you assistance or insight regarding these aspects of your matter. However, to the extent your correspondence concerns the Wisconsin Open Meetings Law, our office can provide some information that you may find helpful.

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 governmental business. Wis. Stat. § 19.81(1). All meetings of governmental 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).

Wisconsin Stat § 19.85 lists exemptions in which meetings may be convened in closed session. Any exemptions to open meetings are to be viewed with the presumption of openness in mind. Such exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993). The exemptions should be invoked sparingly and only where necessary to protect the public interest and when holding an open session would

be incompatible with the conduct of governmental affairs. "Mere government inconvenience is . . . no bar to the requirements of the law." *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

Notice of a contemplated closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

Furthermore, some specificity is required since many exemptions contain more than one reason for authorizing a closed session. For example, Wis. Stat. § 19.85(1)(c) provides an exemption for the following: "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Merely quoting the entire exemption, without specifying the portion of the exemption under which the body intends to enter into closed session, may not be sufficient. Only aspects of a matter that fall within a specific exemption may be discussed in a closed session. If aspects of a matter do not properly fall within an exemption, those aspects must be discussed in an open meeting.

In your correspondence, you also raised the issue of incomplete meeting minutes. In an effort to increase transparency, it is recommended to keep minutes of all meetings held by a governmental body; however, there is no requirement under the open meetings law for a governmental body to do so. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). Meeting minutes are a common method that governmental bodies use to do so. However, so long as the governmental body is maintaining some type of record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied. Nevertheless, a governmental body may choose to go beyond these requirements. Easily accessible agendas and minutes—such as through links on the body's website—and more detailed minutes are ways in which the body can increase government transparency.

In your correspondence you asked, "How can I get information to help me defend myself against this monopoly?" 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. Your correspondence did not provide details regarding your concerns. Consequently, there is insufficient information to evaluate the

issues you raised and determine whether they present novel issues of law that coincide with matters of statewide concern. As a result, while you did not specifically request the Attorney General to file an enforcement action, nonetheless, 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). 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).

Under the open meetings law, the district attorney cannot act to enforce the law unless he or she receives a verified complaint. Therefore, to ensure the district attorney has the authority to enforce the law, you must file a verified complaint. This also ensures that you have the option to file suit, as explained in the previous paragraph, should the district attorney refuse or otherwise fail to commence an enforcement action. For further information, please see pages 29-30 of the Open Meetings Law Compliance Guide located on DOJ's website (<https://www.doj.state.wi.us/sites/default/files/dls/2015-OML-Guide.pdf>) and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a sample template for a verified open meetings law complaint.

Additionally, you may 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 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>

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, maintains an Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

Lawrence Quillin
December 27, 2017
Page 4

By way of sending a copy of this response letter to Chairman Timothy Candahl, DOJ is informing the Shelby Town Board of your concerns. I invite Chairman Candahl to contact our office if the board has any questions or if he wishes to discuss the information provided in this letter.

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

Cc: Chairman Timothy Candahl, Shelby Town Board



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

December 27, 2017

Lauren Jensik
Shahzeb Hashim
The Medill Justice Project
Northwestern University
1845 Sheridan Road
Evanston, IL 60208

Dear Ms. Jensik and Mr. Hashim:

This letter is in response to your correspondence to me, dated May 9, 2017, in which you requested the Wisconsin Department of Justice's (DOJ) assistance regarding the denial of your public records request for "17-year-old police records" relating to the "murder of Shanna M. Van Dyn Hoven on June 25, 2000, in Kaukauna, as well as the subsequent arrest and conviction of Kenneth A. Hudson" by the Kaukauna Police Department. You asked DOJ to "initiate a mandamus action seeking prompt release of the requested records." You also provided copies of your request and the denial letter.

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. 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).

Whether an investigation or litigation is ongoing and whether the confidentiality of the requested records is material to that ongoing investigation or litigation are factors that an authority may consider in applying the balancing test. Cf. *Linzmeier 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); *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584. 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).

The denial letter you provided referenced a common law limitation on the right to inspect a prosecutor's files. *See* Wis. Stat. § 19.35(1)(a). A prosecutor's files are not subject to disclosure under the public records law. *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 436, 477 N.W.2d 608 (1991); *see also Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584. This common law limitation does not apply to the same records if in the possession of another government authority, including a law enforcement agency. It appears the police department did not rely on this common law limitation in denying your public records request, but instead, it considered the public policy interest underlying the limitation in its balancing test analysis.

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

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. Based on the facts presented, your matter 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 at this time.

Although DOJ is not pursuing an action for mandamus on your behalf at this time, I am sending a copy of this response to Kaukauna City Attorney Kevin W. Davidson to make

Lauren Jensik
Shahzeb Hashim
December 27, 2017
Page 3

him aware of your concerns. I invite City Attorney Davidson to contact our office if he has any questions or if he wishes to discuss this matter.

You may 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:

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

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

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. 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. DOJ appreciates your concern. 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

Cc: Kaukauna City Attorney Kevin W. Davidson



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

December 27, 2017

James Maurer

[REDACTED]
Milwaukee, WI 53208-3112

Dear Mr. Maurer:

This letter is in response to your correspondence to Attorney General Brad Schimel, dated May 17, 2017, in which you provided a copy of the text of a letter you sent to Sheboygan City Attorney Charles Adams. You stated that you "would appreciate it if [our] office would look into this matter." Your concerns regard the apparent addition of "several items pertaining to the Kohler Company proposed annexation and proposed rezoning to the [City of Sheboygan Common Council] agenda . . . only a few hours prior to" the meeting. This response is based on the limited information provided in your correspondence.

The Wisconsin 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 governmental business. Wis. Stat. § 19.81(1). All meetings of governmental 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).

The open meetings law requires that 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.

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). When calculating the 24-hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and

legal holidays shall be excluded. 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. Wis. Stat. § 19.84(3). 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).

In your correspondence to City Attorney Adams, you stated that “there is no reason for expediting this agenda item under the ‘for good cause’ clause as described in the Wisconsin State Statutes as this item is neither ‘impossible or impractical[]’ to post to the public with the required twenty four hour notice.” As you are aware, no Wisconsin court decisions or Attorney General opinions discuss what constitutes “good cause” to provide less than 24-hour notice of a meeting. The provision, like all other provisions of the open meetings law, must be construed in favor of providing the public with the fullest and most complete information about governmental affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1) and (4). If there is any doubt whether “good cause” exists, the governmental body should provide the full 24-hour notice. The information provided in your correspondence is insufficient to evaluate your matter and determine whether there was “good cause” for the addition of items to the agenda less than 24-hours prior to the meeting. The determination of whether there was “good cause” would be a question for a court to decide based on the circumstances of the situation. In such a situation, the governmental body bears the burden of showing that good cause existed.

Public notice of a meeting must provide the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session.” Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* For additional information on the notice requirements of the open meetings law, please see 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>).¹

Also in your correspondence to City Attorney Adams, you stated the “Wisconsin Open Meetings Law requires an issue be on the agenda before the public can address it in Public Comment. Not giving the required twenty four hour notice left the public without the means with which to address their concerns.” While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body’s meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself

¹ Your correspondence cited the 2010 edition of the compliance guide, which was updated in 2015. DOJ’s website provides the 2015 edition. Another updated edition, expected in early 2018, will also be provided on DOJ’s website.

whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak.

If a governmental body decides to set aside a portion of an open meeting as a public comment period, this must be included in the meeting notice. During such a period, the body may receive information from the public and may discuss any matter raised by the public. If a member of the public raises a subject that does not appear on the meeting notice, however, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting for which more specific notice can be given. In addition, the body may not take formal action on a subject raised in the public comment period, unless that subject is also identified in the meeting notice.

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. Your correspondence did not provide insufficient information to evaluate the issues you raised and determine whether they present novel issues of law that coincide with matters of statewide concern. As a result, while you did not specifically request the Attorney General to file an enforcement action, nonetheless, 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). 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).

Under the open meetings law, the district attorney cannot act to enforce the law unless he or she receives a verified complaint. Therefore, to ensure the district attorney has the authority to enforce the law, you must file a verified complaint. This also ensures that you have the option to file suit, as explained in the previous paragraph, should the district attorney refuse or otherwise fail to commence an enforcement action. For further information, please see pages 29-30 of the Open Meetings Law Compliance Guide located on DOJ's website (<https://www.doj.state.wi.us/sites/default/files/dls/2015-OML-Guide.pdf>) and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a sample template for a verified open meetings law complaint.

Additionally, you may 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:

James Maurer
December 27, 2017
Page 4

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/inneedalawyer/pages/lris.aspx>

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. As you are most likely aware, 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:lah

cc: Sheboygan City Attorney Charles Adams