

## 2018 1st Quarter Correspondence

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STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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TTY 1-800-947-3529  
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March 5, 2018

Steven Alt

[REDACTED]  
Glendale, WI 53209

Dear Mr. Alt:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 6, 2017 correspondence regarding the response of the Wisconsin Department of Natural Resources (DNR) to your public records request identified as "16ORR3908." You wrote, "I believe the DNR has decided to instead deny me the data and or records I requested." Your correspondence did not provide details regarding your public records request or DNR's response.

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concern about your public records request to the DNR. However, DOJ cannot offer you legal advice or counsel concerning your public records request as DOJ may be called upon to represent the DNR. However, I contacted the DNR and made them aware of your concerns.

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, 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 the DNR. Therefore, although you did not specifically request the Attorney General to file an action for mandamus, 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:

Steven Alt  
March 5, 2018  
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Lawyer Referral and Information Service  
State Bar of Wisconsin  
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<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.

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

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

Sincerely,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah



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March 5, 2018

Joseph R. Cincotta  
Law Offices of Joseph R. Cincotta  
400 E. Wisconsin Avenue, Suite 205  
Milwaukee, WI 53202

Dear Attorney Cincotta:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence to Attorney General Brad Schimel, dated August 4, 2017, in which you requested “the Department of Justice investigate and prosecute enforcement of [your public records request to the Village of Jackson] to the fullest extent of the law.” You provided that “[n]o response has been provided to date” to your public records request.

As you are likely aware, the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority “shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.” Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response “depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations.” *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm’rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority “can be swamped with public records requests and may need a substantial period of time to respond to any given request”).

While the law requires an authority to fill a request or notify the requester of a determination to deny a request, the law does not require an authority to respond to a requester if the authority has no records responsive to a request. However, DOJ advises that an authority notify a requester if they have no responsive records. See *Journal Times*, 2015 WI 56, ¶ 102 (“While it might be a better course to inform a requester that no record exists, the language of the public records law does not specifically require such a response.”).

DOJ’s Office of Open Government (OOG) 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 an update on the status of the response and, if possible, indicate 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 in cases presenting novel issues of law that coincide with matters of statewide concern. Based on the information you provided, your matter 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.

While we are declining to pursue an action for mandamus at this time, I contacted Attorney Matt Parmentier regarding your matter, and I made him aware of your concerns. Attorney Parmentier informed me that the village has since provided with you with the requested records.

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.

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:acg:lah

Cc: Attorney Matt Parmentier



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March 5, 2018

Karla Duchac

[REDACTED]  
Shawano, WI 54166

Dear Ms. Duchac:

The Wisconsin Department of Justice (DOJ) is in receipt of your July 19, 2017 correspondence in which you stated, "We have just installed the software package 'Skype for Business.'" You provided that "it allows you to send quick little conversations between department employees without using email." You asked, "Should these conversations be backed up like email messages? Are they considered a public record?"

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

The substance, not the format, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672,679, 137 N.W.2d 470 (1965). Generally, the electronically stored information you described, conversations between authority employees on software installed by the authority, constitutes a "record" within the meaning of the public records law. As such, the Skype for Business conversations would be subject to disclosure under the public records law.

In your correspondence, you mentioned backing up the Skype for Business conversations. Records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. The general statutory requirements for record retention by state agencies, Wis. Stat. § 16.61, and local units of government, Wis. Stat. § 19.21, apply equally to electronic records. Although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See*

Karla Duchac  
March 5, 2018  
Page 2

*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/>.

If you would like to learn more about the Wisconsin Public Records Law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, 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. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals' open government questions. The PROM telephone number is (608) 267-2220.

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  
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March 22, 2018

Annette Fechner  
[REDACTED]

La Crosse, WI 54601

Dear Ms. Fechner:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 4, 2017 correspondence regarding open meetings law issues arising from the Town of Greenfield Board meetings.

DOJ's 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 that some of the subject matter of your correspondence is outside this scope. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG's responsibilities. You may wish to contact your local district attorney or private legal counsel regarding your property concerns. However, we can address your correspondence to the extent it concerns the open meetings law and public records law.

In your correspondence you wrote that you believe it is a "violation of the open meeting compliance rules" for most of the board members to "not answer our calls/e-mails." The open meetings law applies to every meeting of a governmental body. Wis. Stat. § 19.83. A "meeting" is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .

Wis. Stat. § 19.82(2). A phone call or an email to an individual board member is generally not a meeting under the open meetings law, and is therefore outside the scope of the OOG's responsibilities.



In your correspondence you wrote that you were told by the board president that you could stay "if you kept your mouth shut and did not say another word" and that you did not believe the board president had the authority to remove you from an open session meeting. The open meetings law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of government business. Wis. Stat. § 19.81(1). All meetings of government bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

For example, the Attorney General has concluded that members of the public not only have a right to attend open meetings, but they also have a concomitant right to take notes at such a meeting, or to do other nondisruptive acts, in order to obtain and preserve "the fullest and most complete information" of what occurred. *See* 66 OAG 318, 324-25 (1977). Further, under Wis. Stat. § 19.90, the government body "shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting." That section, however, "does *not* permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants." Wis. Stat. § 19.90.

Similarly, a governmental body must meet in a facility which gives reasonable public access, and may not systematically exclude or arbitrarily refuse admittance to any individual. *State ex rel. Badke v. Vill. Board of Vill. of Greendale*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993). The open meetings law, however, does not require absolute accessibility. *Id.*

As noted above, Wis. Stat. § 19.81(1) states that the public is entitled to "the fullest and most complete information regarding government affairs *as is compatible with the conduct of government business.*" Thus, while the public generally has the right to attend open session meetings under the open meetings law, other laws might apply to those who disrupt open meetings. Section 19.98 only authorizes the Attorney General to provide interpretations of the open meetings law to members of the public; therefore, I am unable to address the applicability of other laws to your situation.

Further, 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. Although 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) and 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 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, and members of the public may also be asked to leave if they become disruptive or otherwise interfere with the conduct of the meeting. *See* Nix Correspondence (October 29, 2002).

In your correspondence you also wrote, "We have also asked, from the secretary for all the property owners who have had to pay for their driveway entrances with road work. We have heard nothing." If this request was intended to be a public records request, I would like to provide you with some information regarding 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). Furthermore, 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, 462 (Ct. App. 1992). Sometimes, an authority may receive a question from an individual that is intended to be a public records request. If the authority knows a record would answer the individual's question, it is advisable for the authority to simply provide the record to the requester (or contact the requester to see if he or she would like the record). If a requester seeks particular information from an authority via a public record request, the requester should ensure that he or she phrases the request such that it seeks records containing the desired information and that it does not simply ask a question.

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

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. 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 and Public Records Law, maintains an Open Meetings Law Compliance Guide and a Public Records Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). Generally, the Attorney General may elect to prosecute complaints presenting novel issues of law that coincide with matters of statewide concern. 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).

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. 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 at this time.

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a

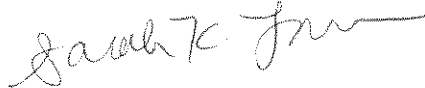
private attorney may charge attorney fees. You may reach it using the contact information below:

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

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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

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Deputy Attorney General

Delanie M. Breuer  
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March 28, 2018

Susan Feldhusen

[REDACTED]  
Milwaukee, WI 53223

Dear Ms. Feldhusen:

This letter is in response to your correspondence, dated March 8, 2018, regarding a public records request you submitted to the Wisconsin Department of Children and Families (DCF). DCF denied your request citing statutes prohibiting the release of the requested records. You wrote, "Please advise if there is any further action I can take in this matter."

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concern about this issue. DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent DCF. However, I contacted DCF's Office of Legal Counsel to make them aware of your concerns. While we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

The public records law 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. A statute may provide such an exception. If a statute prohibits the release of a record in response to a public records request, an authority's records custodian cannot release the record. (The common 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 other exceptions.)

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

Susan Feldhusen  
March 28, 2018  
Page 2

for the district attorney of the county where the record is found,<sup>1</sup> 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 explained above, DOJ may be called upon to represent DCF. Therefore, although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

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:

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

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

Sincerely,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: DCF Office of Legal Counsel

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<sup>1</sup> 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.



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

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Deputy Attorney General

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March 22, 2018

Via email

Sheriff Mylan C. Fink, Jr.  
180 S. Macy St.  
P.O. Box 1273  
Fond du Lac, WI 54936-1273

Dear Sheriff Fink:

The Department of Justice (DOJ) is in receipt of your March 1, 2018 correspondence to Attorney General Brad Schimel regarding a public records request you submitted to the Department of Health Services (DHS). You wrote that you sent a public records request on January 8, 2018 and a second, follow-up request on January 23, 2018. On January 24, 2017, you received an email from a DHS employee indicating that a DHS section chief would be reaching out to you, but, as of the date of your letter, you had not heard back from DHS nor had you received the records you requested. You asked for any direction or help the Attorney General's Office could offer.

The Attorney General and DOJ's Office of Open Government (OOG) 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 matter as DOJ may be called upon to represent DHS.

Although DOJ cannot offer you legal advice or counsel, nevertheless, I contacted DHS Chief Legal Counsel Sandra Rowe regarding your matter, I brought your concerns to her attention, and she said she would investigate the matter. Later, Attorney Rowe contacted me to inform me that she looked into it, and DHS would be responding to you promptly. I expect that if you have not received a response from DHS as of the date of this letter, you will be shortly. It is my hope that this resolves your matter. If you still have concerns, please contact the OOG directly at (608) 267-2220.

Sheriff Mylan C. Fink, Jr.

March 22, 2018

Page 2

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

Sincerely,

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

Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

Cc: Sandra Rowe, DHS





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  
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Sarah K. Larson  
Assistant Attorney General  
larsonsk@doj.state.wi.us  
608/266-1221  
TTY 1-800-947-3529  
FAX 608/266-2779

March 16, 2018

Leighton Lindsey #423758  
Columbia Correctional Institution  
2925 Columbia Drive  
P.O. Box 950  
Portage, Wisconsin 53901-0950

Dear Mr. Lindsey:

The Wisconsin Department of Justice (DOJ) is in receipt of your October 8, 2017 correspondence to Attorney General Brad Schimel in which you requested that DOJ “order the Wisconsin Department of Safety and Professional Services to relinquish to me the following documents to review and inspect – Case: Leighton Lindsey v. Mary A. Sauvey M.D. File # 15 MED 383, the entire file.” You stated that your previous request to the Department of Safety and Professional Services was “denied,” and now “demand[]” that DOJ “have said (file) documents transferred” to you.

The Attorney General and DOJ’s Office of Open Government appreciate your concerns regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. However, DOJ cannot offer you legal advice or counsel concerning your public records request as DOJ may be called upon to represent the Department of Safety and Professional Services. As a courtesy to you, I reached out to the records custodian at the Department of Safety and Professional Services regarding your request, and was informed that they responded to your request in a letter dated November 7, 2017.

Although DOJ cannot offer you legal advice or counsel regarding this matter, I am providing you with the following information regarding Wisconsin’s public records law that you may find helpful.

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, some of the records you requested may pertain to you; therefore, you may request those records pursuant to the public records law. However, under the public records law, certain information may still be redacted from the records.

Leighton Lindsey #423758

March 15, 2018

Page 2

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. *See 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). As is pertinent to your request, the contents of an administrative warning fall into the category of absolute denial of access, although the record that an administrative warning was issued is a public record. *See Wis. Stat. § 448.02(8)(d)*.

If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See Wis. Stat. § 19.36(6)*.

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. *See 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. *See 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.

It is important to note that the public records law states that no action for mandamus may be commenced by an incarcerated person later than 90 days after the date the request was denied. *See Wis. Stat. § 19.37(1m)*. Inmates who seek mandamus must also exhaust their administrative remedies first before filing an action under Wis. Stat. § 19.37. *See Wis. Stat. § 801.07(7); Moore v. Stahowiak*, 212 Wis. 2d 744, 749-50, 569 N.W.2d 70 (Ct. App. 1997). For requesters who are not committed or incarcerated, an action for mandamus arising under the public records law must be commenced within three years after the cause of action accrues. *See Wis. Stat. § 893.90(2)*.

Leighton Lindsey #423758  
March 15, 2018  
Page 3

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. *See* 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. As stated above, however, DOJ may be called upon to represent the Department of Safety and Professional Services. Therefore, we respectfully decline to file 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/lris.aspx>

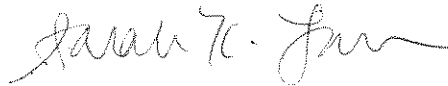
The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).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

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

Leighton Lindsey #423758  
March 15, 2018  
Page 4

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 cursive script, appearing to read "Sarah K. Larson".

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:skl

Cc: Wisconsin Department of Safety and Professional Services



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

Paul W. Connell  
Deputy Attorney General

Delanie M. Breuer  
Chief of Staff

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

March 5, 2018

Dr. Grace McLaughlin

[REDACTED]  
New Glarus, WI 53574

Dear Dr. McLaughlin:

The Wisconsin Department of Justice (DOJ) is in receipt of your August 3, 2017 correspondence in which you asked “[i]f a meeting is identified and noticed as a Public Hearing, is it appropriate or legal for the Chair of the Board or the Committee to deny citizens the opportunity to speak to the matter(s) listed in the Notice?”

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).

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 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

Dr. Grace McLaughlin  
March 5, 2018  
Page 2

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.

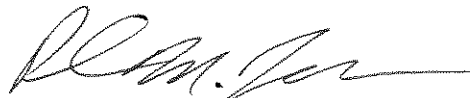
The information you provided is insufficient to evaluate whether the "Public Hearing" you refer to is a public hearing that would require a public comment period mandated by state statute. Nonetheless, I hope that you find the information provided helpful.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Open Meetings Law, 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:acg:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

Paul W. Connell  
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Chief of Staff

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FAX 608/267-2779

January 29, 2018

Amanda Seipel

[REDACTED]  
Mondovi, WI 54755

Dear Ms. Seipel:

This Department of Justice (DOJ) is in receipt of your correspondence, dated July 17, 2017 and October 24, 2017, regarding alleged violations of the Wisconsin public records law by Mondovi city officials. In your letter you reference the response you received to a public records request you made to the city. You also stated that you were writing to bring attention to the "gross abuse of power that the local officials, employees, and candidates are committing in the city of Mondovi, WI," and you requested "help in investigating this issue further."

DOJ's 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 that some of the subject matter of your correspondence is outside this scope. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG's responsibilities. You may wish to contact the district attorney or law enforcement regarding your concerns. However, we can address your correspondence to the extent it concerns the public records law.

I reviewed your public records request and the city's response. For several of the items you requested, the city responded that no such records 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. In this case, the city did advise you that no such records existed.

It appears that several portions of your request did not specify a timeframe. A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). There are no “magic words” that are required, and no specific form is permitted to be required in order to submit a public records request. However, the request must be reasonably specific as to the subject matter and length of time involved. Wis. Stat. § 19.35(1)(h); *Schopper v. Gehring*, 210 Wis. 2d 208, 212-13, 565 N.W.2d 187 (Ct. App. 1997). In response to your request, the city requested that you clarify the date ranges for the documents you requested and stated they would be “happy to complete your request.”

In your correspondence to DOJ you wrote, “Other people have made open records request and have not received the records they requested as well.” You did not provide details regarding these other requesters’ circumstances. The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority “shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.” Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response “depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations.” *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; see *Journal Times v. Police & Fire Comm’rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority “can be swamped with public records requests and may need a substantial period of time to respond to any given request”).

The OOG 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 for the authority to send the requester 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.

In your correspondence you also stated, “I made a request for 2016 annual payroll along with other open records. I have been denied access to such open records . . . . After that request was made, the city administrator put an article in the local paper, stating that annual income is not subject to open records.” The public records law authorizes requesters to inspect or obtain copies of “records” created or maintained by an “authority.” Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This



balancing test, determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. Wis. Stat. § 19.35(4)(b).

Finally, in your correspondence you stated, "Bradley Hanson placed another article in the paper stating, to obtain open records taxpayers must pay the staff's hourly wage, benefit costs, and taxes. This means we have to pay \$51.85/hr to obtain open records." Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs of four specific tasks: (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54 (citation omitted) (emphasis in original). The amount of such fees may vary depending on the authority. The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f). Generally, the rate for an actual, necessary, and direct charge for staff time should be based on the pay rate of the lowest paid employee capable of performing the task.

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. Based on the information you provided, your matter does not appear to raise novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf at this time.

Although we are declining to pursue an action for mandamus at this time, I contacted City Administrator/Clerk Bradley J. Hanson, and we discussed your matter. Some of the specific issues we discussed were sufficient requests, the importance of communication between an authority and requester, and personnel and salary records generally being subject to disclosure. Mr. Hanson also indicated that the city now posts salary information on its website. We also discussed the limited types of fees that are permissible under the public records law.

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

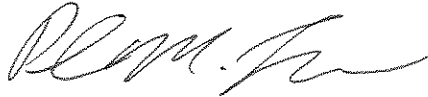
<http://www.wisbar.org/forpublic/inedalawyer/pages/lris.aspx>

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.

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:acg:lah

Cc: City Administrator/Clerk Bradley J. Hanson



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
ATTORNEY GENERAL

Paul W. Connell  
Deputy Attorney General

Delanie M. Breuer  
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www.doj.state.wi.us

Sarah K. Larson  
Assistant Attorney General  
larsonsk@doj.state.wi.us  
608/266-1221  
TTY 1-800-947-3529  
FAX 608/267-2779

March 28, 2018

Kenneth Streeter II

[REDACTED]  
Beloit, WI 53511

Dear Mr. Streeter:

The Wisconsin Department of Justice (DOJ) is in receipt of your September 15, 2017 email correspondence regarding an "FOI request" to your local school district. In your email, you stated that, "[a]fter a month of hearing nothing" you wrote another letter to the school board. You also stated that, "within 2 days, I received a tiny part of what I asked for, and a letter saying that all my request would be met, and was legal." Finally, you stated that after "another month," you wrote another letter and have heard no response, leading you to believe that the school district "is not honoring my legal request for records, and by law, [is] in violation of FOIA laws." You asked how to "go about filing a complaint against [the] school district for violating the law."

Your correspondence references the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA applies to federal agencies and helps ensure public access to records of federal agencies. In Wisconsin, the state counterpart to FOIA is the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The public records law only applies to records in the custody of an authority.

The 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) ("While a record will always contain information, information may not always be in the form of a record."); 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).

In your correspondence you asked the Attorney General how you should "go about filing a complaint." There is no specific application for filing an action for mandamus, but in order 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.

Although you have not asked the Attorney General to pursue a mandamus action on your behalf, the Attorney General respectfully declines to take any action in this matter, including filing an action for mandamus on your behalf, at this time. While the public records issue that you raised is important, it does not appear to present novel issues of law that coincide with matters of statewide concern.

Although 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:

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Madison, WI 53707-7158  
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<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

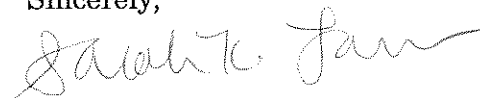
DOJ is committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin public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

Kenneth Streeter  
March 28, 2018  
Page 4

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah K. Larson".

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:skl



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL  
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Paul W. Connell  
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Assistant Attorney General  
larsonsk@doj.state.wi.us  
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TTY 1-800-947-3529  
FAX 608/267-2779

March 28, 2018

David P. Turner

██████████  
Palmyra, WI 53156

Dear Mr. Turner:

The Wisconsin Department of Justice (DOJ) is in receipt of your undated correspondence to Attorney General Brad Schimel, received on October 23, 2017, in which you requested the Attorney General “bring an action for mandamus asking a court to order release of the records [you] requested” from the Palmyra Town Clerk. Specifically, you requested “a listing of all correspondents between Town Officials and Legal offices, and copies of all invoices and monies paid for legal services by the Town of Palmyra pertaining to all annexations dating back to 2011.”

The public records law authorizes requesters to inspect or obtain copies of “records” created or maintained by an “authority.” Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. Wis. Stat. § 19.35(4)(b). Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Law Offices of 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 your correspondence you wrote, "I received a response from Town Attorney Allen Larson stating that the request for all correspondence [and invoices] was denied on the basis of attorney-client privilege," and that you believe the "rationale suggesting that the subject records need not be provided is wrong." 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). Moreover, the attorney-client privilege, Wis. Stat. § 905.03, does provide sufficient grounds to deny access without resorting to the public records balancing test. *Id.* Therefore, an authority may deny a records request if the records fall within the attorney-client privilege. However, the information you provided is insufficient to evaluate whether the requested records contain such attorney-client privileged communications.

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. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, 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:

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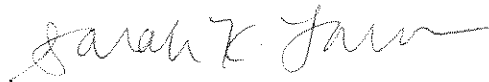
David P. Turner  
March 28, 2018  
Page 3

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

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 cursive script that reads "Sarah K. Larson".

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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March 27, 2018

Philip H. Wentzel (11686-089)  
FCI Otisville  
Federal Correctional Institution  
Post Office Box 1000  
Otisville, NY 10963

Dear Mr. Wentzel:

The Wisconsin Department of Justice (DOJ) is in receipt of your October 11, 2017, December 4, 2017, and December 26, 2017 correspondence to Attorney General Brad Schimel in which you requested the Attorney General “bring ‘an action of mandamus’ seeking the court in Fond du Lac County, Wisconsin order the release of records (in an authorized fashion) [you] have requested via Wisconsin’s Open Records statutes.”

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, if the records you requested pertain to you, you may request them pursuant to the public records law. However, certain information may still be redacted from the records as provided for under the public records law.

The public records law authorizes requesters to inspect or obtain copies of “records” created or maintained by an “authority.” Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. 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).

Wisconsin Const. art. I, § 9m requires that crime victims be treated with “fairness, dignity and respect for their privacy.” Related Wisconsin statutes recognize that this state constitutional right must be vigorously honored by law enforcement agencies, and that crime victims include both persons against whom crimes have been committed and the family members of those persons. Wis. Stat. §§ 950.01 and 950.02(4)(a). Chapter 950 of the Wisconsin Statutes also protects the rights of witnesses to crimes, including protecting them from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts. Wis. Stat. §§ 950.02(5) and 950.04(2w). The Wisconsin Supreme Court, speaking about both Wis. Const. art. I, § 9m, and related victim rights statutes, has instructed that “justice requires that all who are engaged in the prosecution of crimes make every effort to minimize further suffering by crime victims.” *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ¶ 26, 278 Wis. 2d 216, 692 N.W.2d 623.

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.

It is important to note that the public records law states that no action for mandamus may be commenced by an incarcerated person later than 90 days after the date the request was denied. *See* Wis. Stat. § 19.37(1m). Inmates who seek mandamus must also exhaust their administrative remedies first before filing an action under Wis. Stat. § 19.37. *See* Wis. Stat. § 801.07(7); *Moore v. Stahowiak*, 212 Wis. 2d 744, 749-50, 569 N.W.2d 70 (Ct. App. 1997). For requesters who are not committed or incarcerated, an action for mandamus arising under the public records law must be commenced within three years after the cause of action accrues. *See* Wis. Stat. § 893.90(2).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, 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:

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Sincerely,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah