

2019 3rd Quarter Correspondence

Index

	Page
Public Records – authority, balancing test, sufficient request, timeframe for response, fees	3
Open Meetings – enforcement options	6
Public Records – DOJ may be called upon to represent DSPS, enforcement options	8
Public Records – incarcerated requestor, balancing test, reasons for denial, ongoing investigation or litigation	11
Public Records – incarcerated requestor, balancing test, reasons for denial	13
Public Records – DOJ may be called upon to represent DWD, exceptions to release of records, reasons for denial	17
Public Records – DOJ may be called upon to represent DOC, balancing test, reasons for denial	20
Public Records – DOJ may be called upon to represent DHS, right to request records	23
Public Records – timeframe for response, no records exist, reasons for denial	26
Public Records – balancing test, timeframe for response, reasons for denial, no records exist, attorney-client privilege	30
Public Records – DOJ may be called upon to represent DOC, balancing test, reasons for denial, no records exist, not required to create a new record	33
Public Records – no records exist	36
Open Meetings – notice, agendas, closed session	39
Public Records and Open Meetings – notice, closed session, Wis. Stat. § 19.85(1)(b), (c) exemptions, meeting minutes, timeframe for response, no records exist	44
Public Records and Open Meetings – authority, quasi-governmental corporation	51

	Page
Public Records and Open Meetings – closed session, Wis. Stat. § 19.85(1)(e) exemption, notice, meeting minutes, reasonable public access, timeframe for response	54
Open Meetings – governmental body, subunit, meeting requirements (purpose and numbers)	59



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

July 3, 2019

Susan Pilgrim

[REDACTED]
Curtiss, WI 54422

Dear Ms. Pilgrim:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, postmarked April 13, 2019 and addressed to me, in which you wrote, "I need information as to whether or not it is possible to get a conduct report on a law enforcement officer." You indicated that you were seeking information on an officer in Clark County, Wisconsin, and you wrote, "I need to know where to get it and how much it would cost. What I need to do to get it."

I did not construe your correspondence as a public records request directed to DOJ, therefore, we did not process it as such. I left you two voicemail messages, on April 25, 2019 and May 15, 2019, asking you to contact me in order to discuss your correspondence. To date, I have not heard from you. If you wish to submit a public records request to DOJ, you may do so at any time.

I interpreted your correspondence as seeking general information about how to request public records. 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 public records law defines an "authority" as any of the following having custody of a record:

a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of “authority” is subject to the provisions of the public records law.

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).

In order to submit a public records request, there are no “magic words” that are required, and an authority may not require that a requester fill out a specific form in order to submit a request. One may submit a request verbally or in writing. A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). Under the public records law, a request need not be made in person, and generally, a requester is not required to identify themselves or to state the purpose of the request. See Wis. Stat. § 19.35(1)i (“Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request”).

You may wish to submit your public records request to the law enforcement agency in Clark County that employs the officer about whom you are interested. It is also possible that DOJ, which includes the Division of Law Enforcement Services, may have the records you seek; therefore, you may wish to submit your request to DOJ. However, if you submit such a request, it would be helpful if you provided additional information such as the officer’s name, the time period of the requested records, and any other relevant information.

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").

Regarding your question about costs, 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. However, an authority may not profit from complying with public records requests. *WIREData, Inc.*, 310 Wis. 2d 397, ¶¶ 103, 107 (an authority may not profit from its response to a public records request but may recoup all of its actual costs).

The copy fees charged by an authority may not exceed the "actual necessary and direct cost of reproduction and transcription" unless another law establishes such a fee or authorizes such a fee to be established by law. Wis. Stat. § 19.35(3)(a). An authority may only impose a fee for locating records if the location costs themselves are \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority cannot combine location costs with other costs to reach the \$50 threshold. An authority may require a requester to prepay any fees if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f). For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law, which was issued on August 8, 2018 and can be found on DOJ's website (<https://www.doj.state.wi.us/news-releases/office-open-government-advisory-charging-fees-under-wisconsin-public-records-law>).

I hope you find this information helpful. The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and we are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources on DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law and maintains a Public Records Law Compliance Guide. If you have additional questions, you may also contact the Office of Open Government's Public Records-Open Meetings (PROM) Help Line at (608) 267-2220. Thank you for your correspondence.

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 16, 2019

Judy Haddad

[REDACTED]
Lindenhurst, IL 60046

Dear Ms. Haddad:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 17, 2019 and January 23, 2019, in which you wrote, "I have had to reach out to the Dodge County Board Chairman on numerous occasions about open meetings violations." You also raised concerns that the Dodge County Sheriff's Office "has violated open meetings statutes several times and this is in front of the DA who refused to step in."

The Attorney General and DOJ's Office of Open Government (OOG) work 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. In your correspondence, you did not provide details regarding your concerns about alleged open meetings law violations. 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, we are unable to offer you assistance regarding your concerns that you "have been catfished/trolled by the sheriff on social media" because this is outside the scope of the OOG's responsibilities. You may wish to contact the district attorney or law enforcement regarding your concerns.

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 30-31 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.

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/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 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 is provided pursuant to Wis. Stat. § 19.39 and 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



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 18, 2019

Pamela Wells



Oostburg, WI 53070

Dear Ms. Wells:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 23, 2019, in which you wrote "I have a question regarding Wisconsin Open Records law. I requested title information from the Department of Professional Services regarding a mobile home . . . How do I go about filing a complaint?"

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. As you know from our telephone discussion on June 6, 2019, however, DOJ cannot offer you legal advice or counsel concerning your public records request to the Wisconsin Department of Safety and Professional Services (DSPS), as DOJ may be called upon to represent DSPS. That said, I reviewed relevant documents from DSPS and contacted DSPS to make them aware of your concerns.

I can also provide you with some general information which I hope you will find helpful. 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 federal or state statute prohibits the release of a record in response to a public records request, an authority's records custodian cannot release the record. Wis. Stat. § 19.36(1). (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, also provide other exceptions to disclosure.)

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. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b).

The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf. As stated above, DOJ may be called upon to represent DSPS.

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
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 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 Wisconsin 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.

Pamela Wells
July 18, 2019
Page 3

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and 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:amh

Cc: Chief Legal Counsel, DSPS



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 24, 2019

Stephen Lee
Racine County Jail
717 Wisconsin Avenue
Racine, WI 53403

Dear Mr. Lee:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 23, 2019, 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 Mount Pleasant Police Department.

First, it should be noted that it appears that when you made your request on January 6, 2019, you were incarcerated at the Racine County Jail. 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.

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. 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).

If the records you requested were regarding an ongoing investigation or litigation, an authority may withhold records material to the ongoing investigation or litigation. 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. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811; *Journal/Sentinel, Inc. v. Agerup*, 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 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 36.

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. 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 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 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.

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 is provided pursuant to Wis. Stat. § 19.39 and 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

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 24, 2019

Kenneth Risch, #579982
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768

Dear Mr. Risch:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 7, 2019, regarding a writ of mandamus you filed with the Taylor County Circuit Court for the release of records you requested related to an arrest in December 2013. You wrote, "Judge Knox-Bauer denied [your writ] for failure to follow procedure and requirements for judicial review." You asked, "Can you assist in any way with this matter?"

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.

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. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

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

The public records law 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 36.

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. Your public records issue does not appear to concern novel issues of law that coincide with matters of statewide concern. Therefore, although you did not specifically request the Attorney General to file an action for mandamus, 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

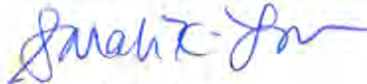
<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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 public records law, maintains a Public Records Law Compliance Guide and provides a recorded webinar and associated presentation documentation.

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

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and 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

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 25, 2019

Valerie Redanz
[REDACTED]

Marshfield, WI 54449

Dear Ms. Redanz:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 19, 2019, in which you wrote "I would like to bring a complaint against the Division of Workforce Development for a lack of appropriate services for an Open Records request."

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. As you know from our telephone discussion on June 11, 2019, however, DOJ cannot offer you legal advice or counsel concerning your public records request to the Wisconsin Department of Workforce Development (DWD), as DOJ may be called upon to represent DWD. That said, I did contact DWD to discuss your concerns.

I can also provide you with some general information which I hope you will find helpful. 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 federal or state statute prohibits the release of a record in response to a public records request, an authority's records custodian cannot release the record. Wis. Stat. § 19.36(1). (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, also provide other exceptions to disclosure.)

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. Wis. Stat. § 19.37(1)(a). Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b).

The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf. As stated above, DOJ may be called upon to represent DWD.

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
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 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 Wisconsin 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.

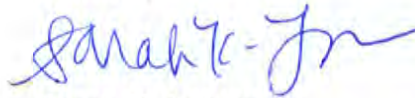
Valerie Redanz

July 25, 2019

Page 3

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson", is written over the typed name.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:amh

Cc: Chief Legal Counsel, DWD



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 25, 2019

Capt. Jason Wilke
[REDACTED]

Dear Capt. Wilke:

The Wisconsin Department of Justice (DOJ) is in receipt of your email correspondence, dated December 21, 2018, regarding your public records request to the Wisconsin Department of Corrections. You wrote, "I was instructed by the Wisconsin Department of Corrections Legal Counsel to contact you in an effort to overturn their denial of an open records request." You requested "the Attorney General overrule the Wisconsin Department of Corrections Public Records Department so that [you] can obtain the complaint that inmate Healy submitted."

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 the Wisconsin Department of Corrections (DOC). I did, however, contact DOC 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. 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).

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 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 explained above, DOJ may be called upon to represent DOC. 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:

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.

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.

Capt. Jason Wilke
July 25, 2019
Page 3

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and 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

Cc: Chief Legal Counsel, DOC



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

July 25, 2019

[REDACTED]
[REDACTED]@hotmail.com

Dear [REDACTED]:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 17, 2018, regarding your public records request for a video "from Mendota Mental Health Institute regarding an incident in the day room on the TRAC 1 unit." Mendota Mental Health Institute denied your request because "the video contains an image of a person receiving treatment." You wrote that you are "officially submitting this as my appeal" to that denial.

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, regarding Wis. Stat. § 51.61, 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.

Moreover, although the Attorney General and the OOG appreciate your concern about your public records request, DOJ cannot offer you legal advice or counsel regarding your public records request, because Mendota Mental Health Institute is a part of the Wisconsin Department of Health Services (DHS), and DOJ may be called upon to represent DHS. I did, however, contact DHS to make them aware of your concerns.

I can also provide you with some general information regarding 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." 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).

For your information, a committed person's right to request records under the public records law is limited to records that contain specific references to the individual or the individual's minor children and are otherwise accessible to the individual by law. *See* Wis. Stat. § 19.32(1b), (1d), and (3). Pursuant to Wis. Stat. § 19.35(1)(am), "any requester who is an individual or person authorized by the individual has a right to inspect any personally identifiable information pertaining to the individual in a record containing personally identifiable information," but there are exceptions under various statutes and regulations.

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 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. Based on your statement in your correspondence that you are "officially submitting this [letter] as my appeal" to the record custodian's decision, I am construing your correspondence as a request for the Attorney General to file an action for mandamus. Nonetheless, we respectfully decline to pursue a mandamus action, because DOJ may be called upon to represent DHS.

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:

July 25, 2019

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/inneedalawyer/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 is provided pursuant to Wis. Stat. § 19.39 and 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

Cc: Chief Legal Counsel, DHS



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

August 1, 2019

Orville Seymer
CRG Network
Post Office Box 371086
Milwaukee, WI 53237

Dear Mr. Seymer:

The Wisconsin Department of Justice (DOJ) is in receipt of your email correspondence, dated December 18, 2018, to Assistant Attorney General Paul Ferguson in which you forwarded your public records requests sent to the City of Franklin. You wrote, "I have followed up with the City Clerk several times since" you submitted the requests and have "received several promises but no records." You requested DOJ "contact the City Clerk and remind her that the time frame for simple requests . . . is 10-14 days."

DOJ is also in receipt of your email correspondence, dated May 22, 2019 and July 9, 2019, to Assistant Attorney General Paul Ferguson in which you forwarded information about additional public records requests that you sent to the City of Franklin. In your correspondence, you noted that "I believe the Mayor is pressuring the clerk and others to withhold records that may be embarrassing to him and his pet project." You requested that DOJ contact the City Clerk and "please pressure her to release these records," because "[t]his is clearly out of control and I have accused the Franklin Mayor of withholding records purposely."

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. The Wisconsin Public Records Law 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).

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the

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

The public records law "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.

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 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 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.

I contacted the City of Franklin Clerk, Sandra Wesolowski, to inform her of your concerns, and to discuss the status of any pending public records requests. Based on the information available to me, I have ascertained the following about your requests:

- 1) The public records requests you made on the following dates have all been fulfilled:
 - a. October 9, 2018
 - b. February 7, 2019 (all four requests from that day)
 - c. March 4, 2019
 - d. April 23, 2019
 - e. May 16, 2019
- 2) The city has reached out to you to clarify, and is currently working to fulfill, the public records requests you made on the following dates:
 - a. March 12, 2019
 - b. April 4, 2019

- c. April 16, 2019
 - d. April 18, 2019
 - e. April 19, 2019
 - f. May 2, 2019
 - g. May 17, 2019
- 3) The city has notified you that no records exist with respect to the public records requests you made on the following dates:
- a. March 20, 2019
 - b. April 25, 2019

I have also ascertained the following additional information about three additional requests. Regarding your public records request from February 22, 2019, the city has informed you that no city-wide records exist, but the city is currently trying to ascertain whether records from individual departments exist. The city will soon be communicating with you about the status of this request, if it has not already.

Regarding your May 22, 2019 and May 24, 2019 public records requests regarding "any records of all Open Records Request[s] and the dates that those requests were [fulfilled]," the city has informed you that no records exist, because the city did not previously maintain a document that tracked all of its public records requests for all requesters. Pursuant to DOJ's suggestion, however, the city has indicated that it will now begin tracking all public records requests. Therefore, in the future, I anticipate that those kinds of records tracking public records requests will be available to you under the public records law, should you wish to request them.

Further, even if no such records tracking public records requests exist currently, the city would still be required under the public records law to provide to you any other records that are responsive to your May 22, 2019 and May 24, 2019 public records requests, such as the public records requests themselves received by the city via mail or email from requesters, and the city's responses to those requests. Such records may be responsive to your requests, because public records requests received by an authority, as well as the authority's responses to those requests, are themselves "records" for purposes of the public records law. *See Nichols v. Bennett*, 199 Wis. 2d 268, 275, 544 N.W.2d 428 (1996).

Finally, it has also come to the city clerk's attention that she did not receive some of your emailed public records requests right away. There appeared to be a technical issue in receiving the emails if she is the recipient of a carbon copy ("cc") of the request, instead of being emailed directly to her email address (in the "to" field). The city clerk will be contacting you to discuss how to resolve this issue going forward.

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

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus

seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. 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. Pursuant to this letter, however, I expect that the city will continue to communicate with you about your outstanding requests, and either fulfill or deny those requests as soon as practicable and without delay.

You may also 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.

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 is provided pursuant to Wis. Stat. § 19.39 and 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

Cc: Sandra Wesolowski, City of Franklin Clerk



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

August 8, 2019

Wallace McDonell
Harrison, Williams & McDonell, LLP
452 West Main Street
Whitewater, WI 53190

Dear Mr. McDonell:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 28, 2019, in which you requested “the Attorney General bring an action for mandamus asking the court to order the Polk County Corporation Counsel and the Polk County Clerk to release records” you requested on behalf of your client, Public Administration Associates, LLC, on November 7, 2018. You wrote, “[t]o date, neither party has complied with the request.”

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of “records” created or maintained by an “authority.” 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).

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.

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.

I contacted the Polk County Clerk, Sharon Jorgenson, to inform her of your concerns, and to discuss the status of any pending public records requests. Based on the information available to me, it appears that the majority of your public records requests were fulfilled on March 11, 2019. Regarding your public records requests about closed session minutes, however, the clerk indicated to me that the county’s corporation counsel had decided to withhold those records based upon attorney-client privilege.

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, I have insufficient information 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).

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.

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 is provided pursuant to Wis. Stat. § 19.39 and 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

Cc: Sharon Jorgenson, Polk County Clerk



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

August 8, 2019

Ben Turk
[REDACTED]

Milwaukee, WI 53212

Dear Mr. Turk:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 25, 2019, April 4, 2019, and April 8, 2019, regarding your public records requests to the Wisconsin Department of Corrections (DOC). You appealed both responses to your requests and you were "not satisfied" with what you received from those appeals. You are writing to DOJ "in pursuit of the full records [you] requested."

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concerns about these issues. However, DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent DOC. I did, however, contact DOC 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. 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).

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.

With limited exceptions, an authority is not required to create a new record by extracting and compiling information from existing records in a new format. 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). Under Wis. Stat. § 19.36(6), however, the records custodian is required to delete or redact confidential information contained in a record before providing access to the parts of a record that are subject to disclosure.

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 explained above, DOJ may be called upon to represent DOC. Therefore, 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:

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.

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 is provided pursuant to Wis. Stat. § 19.39 and 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

Cc: Chief Legal Counsel, DOC



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 4, 2019

Mary Griffith

████████████████████
Bradenton, FL 34211
griffith402@gmail.com

Dear Ms. Griffith:

This letter is in response to your correspondence, received on April 3, 2019, regarding your concerns regarding the City of Wauwatosa Library Board. You wrote "I or others acting on my behalf have requested City of Wauwatosa Library Board Minutes multiple [times] and they do not respond."

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.)

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 order to try to ascertain the status of your public records request or requests, I contacted the City of Wauwatosa. I was told, however, that the library board has not received any public records requests from you. Therefore, I do not have sufficient information to address your concerns any further. Nevertheless, I would encourage you to submit or re-submit a public records request for records you are still seeking, if any.

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. As noted above, I do not have sufficient information to adequately address the issues set forth in your correspondence. Consequently, 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/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 provides several open government resources through its website (<https://www.doj.state.wi.us/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.

Mary Griffith
Page 3

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and 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:amh

Cc: City Attorney



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 4, 2019

Joel Taylor

[REDACTED]
Ladysmith, WI 54848
joeltaylor@jtsoutdoors.com

Dear Mr. Taylor:

The Wisconsin Department of Justice (DOJ) is in receipt of your electronic correspondence to Assistant Attorney General Paul Ferguson, dated March 28, 2019, regarding your concerns that your local school board meetings are not "in compliance with the open meetings laws." In your correspondence, you wrote that "[i]t is my belief that our agendas are typically not written correctly and it is also my belief that they are intentionally not done correctly to allow members of the Board to discuss whatever they choose (especially in closed session), and to limit the information from being shared with the public." You also indicated that "[e]ven our open session agendas have typically been too vague." You further asked if DOJ could give guidance on whether "having an agenda approval/repair at the beginning of a meeting" is permissible or whether "Roberts Rules prevented such an item." I also note that you spoke with Attorney Ferguson on the telephone on March 13, 2019 regarding similar issues.

The Attorney General and DOJ's Office of Open Government (OOG) 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 inquiry about requirements under "Roberts Rules" falls outside of this scope. Consequently, I cannot advise you on those matters outside of the scope of the OOG's authority and responsibilities. However, to the extent your correspondence concerns the Wisconsin Open Meetings Law, I can provide some information that you may find helpful.

The Wisconsin Open Meetings 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 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).

Regarding notice, 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.

The open meetings law also provides for the timing for releasing agendas, as well as the level of specificity required in agenda items for open meetings, in order to provide proper notice. Wis. Stat. § 19.84(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. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

Whether the notice is specific enough is determined on a case-specific basis, based on a reasonableness standard. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 27–29, 301 Wis. 2d 178, 732 N.W.2d 804. This includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Id.* ¶ 28. There may be less need for specificity where a meeting subject occurs frequently, because members of the public are more likely to anticipate that the meeting subject will be addressed, but novel issues may require more specific notice. *Id.* ¶ 31.

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* See also Herbst Correspondence (July 16, 2008).

A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to

that subject, but may not address any topics that are not reasonably related to the information in the notice. *Buswell*, 2007 WI 71, ¶ 34. There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. Stencil Correspondence (Mar. 6, 2008). Nor is a governmental body required to actually discuss every item contained in the public notice. It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. Black Correspondence (Apr. 22, 2009); Krueger Correspondence (Feb. 13, 2019).

Moreover, although the open meetings law governs public access to and notice of meetings of governmental bodies, it does not dictate all procedural aspects of how bodies run meetings. For example, the open meetings law does not specify requirements for the process that governmental bodies use to adopt meeting agendas. Other statutes may govern those issues or set forth certain procedures, but as noted above, I cannot assist you with matters outside of the open meetings law. So long as governmental bodies follow the requirements for adequate and timely notice to the public, the notice complies with the open meetings law.

Regarding closed sessions, Wis. 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).

You indicated in your correspondence that “[i]t is typical of our agendas” to have a “list of statutes” that might justify a closed session, “but no information to let anyone know” what would be discussed. As you discussed with Attorney Ferguson in your March 13, 2019 telephone conversation, 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.

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).

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 the Open Meetings Law Compliance Guide located on DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide also 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:

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 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 is provided pursuant to Wis. Stat. § 19.98 and 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:amh



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 24, 2019

Melissa Murray

[REDACTED]
Kendall, WI 54638
Melissa.steve.murray@gmail.com

Dear Ms. Murray,

This letter is in response to your correspondence, dated April 8, 2019, in which you asked, "When a closed session is posted, is there a requirement to notify all board members of the reason for the closed session? Are minutes required and who is to take those? What type of minutes become a public record from the closed session? If an employee closed session is posted 19.85 (1) (c) can the employee be called in without their knowledge that the closed session is about them? Finally, is there a sanctioning process for rogue board members, whereas the other board members can put limits on a board member who has usurped their own board powers?"

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 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 limited information you provided in your correspondence, it appears certain issues—for example, "the sanctioning process for rogue board members" and "limits on a board member"—may fall outside of this scope. Consequently, we cannot advise you on those matters, as they fall outside of the scope of the OOG's authority and responsibilities. However, to the extent your correspondence concerns the Wisconsin Open Meetings Law, we 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 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).

Regarding notice, every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably

apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

Whether the notice is specific enough is determined on a case-specific basis, based on a reasonableness standard. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 27–29, 301 Wis. 2d 178, 732 N.W.2d 804. This includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Id.* ¶ 28. There may be less need for specificity where a meeting subject occurs frequently, because members of the public are more likely to anticipate that the meeting subject will be addressed, but novel issues may require more specific notice. *Id.* ¶ 31.

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* See also Herbst Correspondence (July 16, 2008). For additional information on the notice requirements of the open meetings law, please see DOJ's Open Meetings Law Compliance Guide, available through DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

Regarding closed sessions, Wis. 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.

Moreover, governmental officials must keep in mind that closed meeting exemptions are restrictive, not expansive. Therefore, 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

Regarding the Wis. Stat. § 19.85(1)(c) exemption, the Attorney General has previously concluded that the exemption is sufficiently broad to authorize convening in closed session to interview and consider applicants for positions of employment. See *Caturia Correspondence* (Sept. 20, 1982). Both the Attorney General and the Wisconsin Supreme Court have also concluded that the Wis. Stat. § 19.85(1)(c) exemption authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant for a position of employment, but does not authorize a closed session to discuss the qualifications and salary range for the position in general. See 80 Op. Att'y Gen. 176, 177-78 (1992); *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶ 37, 301 Wis. 2d 178, 732 N.W.2d 804 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees" (emphasis added)).

Further, the language of the exemption applies to a "public employee over which the governmental body has jurisdiction or exercises responsibility." Wis. Stat. § 19.85(1)(c). The Attorney General has interpreted this exemption to extend to public officers, such as a police chief, whom the governmental body has jurisdiction to employ. See *Caturia Correspondence* (Sept. 20, 1982). An elected official, however, is not considered a "public employee over which the governmental body has jurisdiction or exercises responsibility." Therefore, the Attorney General has opined that the exemption does not authorize a county board to convene in closed session to consider appointments of county board members to a county board committee. See 76 Op. Att'y Gen. 276 (1987).

Regarding your question "If an employee closed session is posted 19.85 (1) (c) can the employee be called in without their knowledge that the closed session is about them," it is unclear what you are asking. Nevertheless, we can provide you with some general information that you might find helpful.

Under a different closed session exemption, Wis. Stat. § 19.85(1)(b), a closed session is authorized for "[c]onsidering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, ... and the taking of formal action on any such matter." If a closed session for such a purpose will include an evidentiary hearing or final action, then the governmental body must give the public employee actual notice of that closed hearing and/or closed final action.

Evidentiary hearings are characterized by the formal examination of charges and by taking testimony and receiving evidence in support or defense of specific charges that may have been made. *See* 66 Op. Att’y Gen. 211, 214 (1977). Where actual notice is required, the notice must state that the person has a right to request that any such evidentiary hearing or final action be conducted in open session. If the person makes such a request, the governmental body may not conduct an evidentiary hearing or take final action in closed session.

However, those provisions on actual notice to the employee would not apply unless the governmental body goes into closed session under Wis. Stat. § 19.85(1)(b). *See* Johnson Correspondence (February 27, 2009). In other words, Wis. Stat. § 19.85(1)(b) requires actual notice to the public employee in question only if the contemplated closed session will include an evidentiary hearing or final action. *Id.* In other circumstances, no actual notice would be required under Wis. Stat. § 19.85(1)(b). *Id.*

Regarding recordkeeping, the open meetings law 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). This requirement applies to both open and closed sessions. *See* De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. The recordkeeping requirements under Wis. Stat. § 19.88(3) can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. *See* I-95-89 (Nov. 13, 1989).

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. As just noted, 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). Other statutes outside the open meetings law may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law, but any such statutes fall outside of the scope of OOG’s responsibilities and authority. Therefore, we cannot provide assistance regarding such subject matter.

If you would like to learn more about what was discussed during a closed session, you could submit a public records request to the governmental body. 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.

Wisconsin Stat. § 19.88(3) provides that meeting records created under that statute—whether for an open or a closed session—must be open to public inspection to the extent prescribed in the state public records law. Because the records law contains no general exemption for records created during a closed session, a custodian must release such items unless the particular record at issue is subject to a specific statutory exemption or the

custodian concludes that the harm to the public from its release would outweigh the benefit to the public. *See De Moya Correspondence* (June 17, 2009).

There is a strong presumption under the public records law that release of records is in the public interest. As long as the reasons for convening in closed session continue to exist, however, the custodian may be able to justify not disclosing any information that requires confidentiality. But the custodian still must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them. *See* 67 Op. Att’y Gen. 117, 119 (1978).

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

The public records law “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.

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).

Regarding enforcement of the public records law, 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 do so at this time.

Regarding enforcement of 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. Again, 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 DOJ's Open Meetings Law Compliance Guide and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide also provides a template for a verified open meetings law complaint.

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/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. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government.

The information provided in this letter is provided pursuant to Wis. Stat. §§ 19.39 and 19.98, and 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:amh



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 25, 2019

Pamela Culver

LaCrosse, WI 54601

Dear Ms. Culver:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 30, 2019, in which you state that you have been unable to obtain a copy of the bylaws of the Coulee Region Humane Society. You stated that you "feel there are some procedures that are either non-existent or not being followed." You also asked, "I believe all 501c3/Not-for-Profit organizations must file a copy of their bylaws with the state and I am wondering if ... I can request a copy or access a copy online?"

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. Based on the limited information you provided in your correspondence, it appears that some issues may fall outside of this scope. Consequently, we cannot advise you on those matters, as they fall outside scope of the OOG's authority and responsibilities. However, to the extent your correspondence seeks general information about the Wisconsin Public Records Law and Wisconsin Open Meetings Law, we can provide some information 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." The public records law defines an "authority" as any of the following having custody of a record:

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

police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of “authority” is subject to the provisions of the public records law.

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

We have insufficient information from your correspondence to analyze whether the non-profit humane society in question is “a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001(3),” or a “quasi-governmental corporation” as defined by the courts. Nevertheless, I hope you find the preceding information useful.

If you would like to learn more about the Wisconsin Public Records Law or the Wisconsin Open Meetings Law, DOJ’s Office of Open Government offers several open government resources through DOJ’s website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law and Open Meetings Law, maintains a Public Records Law Compliance Guide and an Open Meetings Law Compliance Guide, and provides recorded webinars and associated presentation documentation.

DOJ appreciates your concern. If you have additional questions, you may contact the Office of Open Government’s Public Records Open Meetings (PROM) Help Line at (608) 267-2220. Thank you for your correspondence.

The information provided in this letter is provided pursuant to Wis. Stat. § 19.39 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson", with a stylized flourish at the end.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:amh:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 25, 2019

Grant Johnson
directbrander@gmail.com

Dear Mr. Johnson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 15, 2019, regarding your concerns that "Franklin, Wisconsin, under Mayor Steve Olson, has had so many illegal closed sessions" regarding a "TID for The Ball Park Commons." You wrote, "Because these are public funds and they hired a developer with no competition, hence no bids, ALL meetings regarding the public funds need to be open. They are in clear violation of the statute[.]"

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).

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).

Under the open meetings law, a closed session is authorized for "[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). Thus, the Wis. Stat. § 19.85(1)(e) exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds, because the exemption also authorizes a closed session for "conducting other specified public business." For example, the Attorney General has determined that the exemption authorized

a school board to convene in closed session to develop negotiating strategies for collective bargaining. 66 Op. Att'y Gen. 93, 96-97 (1977).

However, it is important to note two things. First, exemptions authorizing a governmental body to meet in closed session should be construed narrowly. Governmental officials must keep in mind that this exemption is restrictive, not expansive. 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. Second, a closed session under this exemption is only permissible "whenever competitive or bargaining reasons require a closed session." The use of the word "require" in Wis. Stat. § 19.85(1)(e) limits that exemption to situations in which competitive or bargaining reasons leave a governmental body with no option other than to close the meeting. *State ex rel. Citizens for Responsible Dev. v. City of Milton*, 2007 WI App 114, ¶ 14, 300 Wis. 2d 649, 731 N.W.2d 640. When a governmental body seeks to convene in closed session under Wis. Stat. § 19.85(1)(e), the burden is on the body to show that competitive or bargaining interests require closure. *Id.* ¶¶ 6-8.

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 follow up correspondence, dated April 16, 2019, you wrote that "the minutes of the open meetings are consistently missing key documents and edited in both minute (written) and audio form." You also wrote that "less than 24 hour notice is routinely given as far as posting and packets made available to the general public."

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. 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.

The 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.

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

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

In your other follow up correspondence, dated May 23, 2019, you wrote to alert DOJ of "[s]everal additional meetings monthly, oftentimes multiple times weekly at a pub called Point After in Franklin, the Mayor calls it his 'second city hall.'" You wrote these meetings are "most often with CC members and or key developers." You requested the Mayor's "calendar for the past 12 months and NONE of these pre-planned meetings are listed." You also wrote, "I have open record requests that exceed three months time and no one seems in to much in a hurry to provide crucial details for the citizens they are to represent[.]"

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). 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. *Badke*, 173 Wis. 2d 553. The open meetings law, however, does not require absolute accessibility. *Id.* As noted above, proper notice of all meetings of a governmental body must be given. Wis. Stat. § 19.84(1). Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the

notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2).

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

The public records law 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. 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.

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). For further information, please see pages 30-31 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. 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).

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/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 and public records law, maintains an Open Meetings Law Compliance Guide and Public Records Law Compliance Guide, and provides recorded webinars and associated presentations 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 is provided pursuant to Wis. Stat. §§ 19.39 and 19.98 and 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:amh:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
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

September 25, 2019

Richard Nyklewicz, Jr.
ricknbarbn@yahoo.com

Dear Mr. Nyklewicz:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 12, 2019 and May 14, 2019, following up from a telephone call with Assistant Attorney General Paul Ferguson on April 11, 2019. In your correspondence, you requested "an Attorney General Office review and explanation of what legally constitutes a public meeting quorum when conducting public business as a Village in Wisconsin." You wrote there are two members of the Public Works Committee and that when one trustee was unable to attend a meeting, a trustee who was not a member of the committee took his place, creating a quorum. You are concerned about "floating member[s]" being "brought in to stack or block a vote" and attempting to "unduly control the outcomes." You also raised concerns about the way in which the new Village President was elected.

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. 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. However, we can address your correspondence to the extent it concerns the open meetings law.

The open meetings law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of 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 applies to every "meeting" of a "governmental body." Wis. Stat. § 19.83. An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law. The definition of a "governmental body" includes a "state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order[.]" Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of

what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. See *State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

If a committee is a “formally constituted subunit” of the governmental body, then it is also subject to the open meetings law. A “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. See 74 Op. Att’y Gen. 38, 40 (1985). If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. See Dziki Correspondence (Dec. 12, 2006).

If the governmental body is a subunit of a parent body, the subunit must allow members of the parent body to attend its open session and closed session meetings, unless the rules of the parent body or subunit provide otherwise. Wis. Stat. § 19.89. Where enough non-members of a subunit attend the subunit’s meetings that a quorum of the parent body is present, a meeting of the parent body occurs, and the notice requirements of Wis. Stat. § 19.84 apply. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408 (1993).

A meeting occurs when a convening of members of a governmental body satisfies two requirements. See *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). The first requirement under the so-called *Showers* test is that there must be a purpose to engage in governmental business (the purpose requirement). Second, the number of members present must be sufficient to determine the governmental body’s course of action (the numbers requirement).

Regarding the purpose requirement, a body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority. *Badke*, 173 Wis. 2d at 573–74. Thus, mere attendance at an informational meeting on a matter within a body’s realm of authority satisfies the purpose requirement. The members of the body need not discuss the matter or even interact. *Id.* at 574–76. This applies to a body that is only advisory and that has no power to make binding decisions. See *State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

Regarding the numbers requirement, a quorum is the minimum number of a body’s membership necessary to act. Certainly, a majority of the members of a governmental body constitutes a quorum. However, a negative quorum, the minimum number of a body’s membership necessary to prevent action, also meets the numbers requirement. As a result, determining the number of members of a particular body necessary to meet the numbers requirement is fact specific and depends on the circumstances of the particular body.

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. Although 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 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 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 is provided pursuant to Wis. Stat. § 19.98 and 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