

2021 3rd Quarter Correspondence

Index

	Page
Public Records – DOJ may be called to represent DNR	3
Public Records – DOJ may be called to represent the Wisconsin legislature	4
Public Records – DOJ may be called to represent UW-Madison	6
Public Records – DOJ may be called to represent UW-Madison	8
Open Meetings – Open Meetings Law Compliance Guide	10
Public Records – DOJ may be called to represent DOC, incarcerated at time of request, mandamus requirements	12
Public Records – DOJ may be called to represent DOC, mandamus requirements	15
Public Records – DOJ may be called to represent DOC, currently incarcerated requester, mandamus requirements	17
Public Records – authority, balancing test, reasons for denial	20
Public Records – DOJ may be called to represent DOC, mandamus requirements	24
Public Records – DOJ may be called to represent UWPD	26
Public Records – DOJ may be called to represent DOC, mandamus requirements	28
Open Meetings and Public Records – notice, no requirement for public comment period, obtaining records from an authority	30
Open Meetings – minutes, no requirement to publish or post minutes online	33
Open Meetings – reasonable access to the public, teleconference or video conference, no requirement for public comment period	35
Public Records – record, obtaining records from an authority	39
Open Meetings – minutes, no requirement to publish or post minutes online	41

	Page
Open Meetings – notice	43
Public Records – FOIA, balancing test, reasons for denial	47
Open Meetings – notice	50
Open Meetings – reasonable access to the public, teleconference or video conference	53
Open Meetings – agenda, no requirement for public comment period	56
Open Meetings – notice, reasonable access to the public, teleconference or video conference	58



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

August 10, 2021

Peter Bernegger

[REDACTED]
New London, WI 54961
pmbmap123@gmail.com

Dear Mr. Bernegger:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 27, 2021, regarding your public records request to the Wisconsin Department of Natural Resources (DNR). You wrote, "The DNR has not produced any records at all to me per my request. They have not denied the records exist. Thus, I am asking you to file a Petition for Mandamus against the DNR to obtain the records for me."

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concerns. DOJ respectfully declines to pursue an action for mandamus on your behalf, and DOJ cannot offer you legal advice or counsel concerning this issue as DOJ represents the DNR in this matter. DOJ strives to provide the public with guidance on the interpretation of our State's public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

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. § 19.39 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

PMF: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

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

September 15, 2021

Paul Heczko

[REDACTED]
Waunakee, WI 53597
pheczko@tds.net

Dear Paul Heczko:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 20, 2021, in which you expressed concerns regarding Representative Robin Vos's Twitter account. You wrote that "he still refuses to make public his official government account. . . . If the courts have declared that [he] cannot do that but he does anyway, what recourse do we have?" You asked, "Is there anything [DOJ] can do?"

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Wisconsin legislature. DOJ strives to provide the public with guidance on the interpretation of our State's public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

Additionally, 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. To the extent your correspondence pertains to matters outside this scope of the OOG's responsibilities, we are unable to offer you assistance or insight, including about your concerns regarding the enforcement of a court order.

While DOJ is unable offer legal advice or counsel in this instance, 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 and maintains a Public Records Law Compliance Guide on its website.

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,

A handwritten signature in blue ink that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**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

September 17, 2021

Michael A. Ayele
waacl13@gmail.com

Dear Michael A. Ayele:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 16, 2021, regarding your public records request to the University of Wisconsin-Madison (UW-Madison).

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent UW-Madison. DOJ strives to provide the public with guidance on the interpretation of our State's public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

While a portion of your correspondence pertained to the public records law, it also discussed a matter outside the scope of DOJ's Office of Open Government's (OOG) responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns regarding the Jeanne Ann Clery Disclosure of Campus Security Policy and Crime Statistics Act and the "annual security report."

While DOJ is unable offer legal advice or counsel in this instance, 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 and maintains a Public Records Law Compliance Guide on its website.

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,

A handwritten signature in blue ink that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF: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

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

September 17, 2021

Rick Bogle

[REDACTED]
Madison, WI 53706
rick.bogle@gmail.com

Dear Rick Bogle:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 16, 2021, regarding your public records request to the University of Wisconsin-Madison (UW-Madison) for “a copy (or copies) of the university’s primate psychological enhancement plan (or plans) and any exemptions that have been granted from January 1 2020 to present.” You wrote, “Having to wait five months for a copy of a record the university is required by federal law to have on hand seems unreasonable.” You wrote, “I would appreciate it if someone from the DOJ’s office would ask the university to speed things up.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent UW-Madison. DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

While DOJ is unable offer legal advice or counsel in this instance, 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. 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 and maintains a Public Records Law Compliance Guide on its website.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF: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 17, 2021

Jack Buswell
Arndt, Buswell & Thorn, S.C.
lawoffice@arndtbuswellthorn.com

Dear Jack Buswell:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 8, 2020, in which you asked DOJ to “consider editing language in the Wisconsin Open Meetings Law Compliance Guide” regarding “enforcement of the Open Meetings Law through forfeitures imposed under Wis. Stat. § 19.96,” because you consider DOJ’s legal interpretation of those provisions to be incorrect. You also asked DOJ to support any “attempt to modify Wis. Stat. § 19.97 to remove the requirement a citizen first file a verified complaint with the district attorney before pursuing a complaint,” because you believe the statutory requirement to be a “needless step” that adds cost and delay to enforcement.

DOJ is committed to government openness and transparency, and DOJ’s Office of Open Government endeavors to make all of our open government resources as helpful and understandable to the public as possible. We appreciate you reaching out to ask us to modify the language in the Wisconsin Open Meetings Law Compliance Guide pertaining to forfeitures under Wis. Stat. § 19.96. We value your input and take the concerns raised in your letter seriously. After careful review of that section of the guide and a thorough analysis of the legal citations therein, we determined that no modifications to the guide are necessary at this time, as DOJ maintains its interpretation of those provisions.

We also appreciate your feedback regarding proposed modifications to Wis. Stat. § 19.97. We encourage you to contact your state legislator regarding those concerns, as any such changes in the statute would require legislative action.

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.

Jack Buswell
Page 2

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

September 17, 2021

Sean Cooper, #226953



Wauwatosa, WI 53213

Dear Sean Cooper:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 8, 2020 and September 4, 2020, in which you requested “assistance in obtaining records regarding [your] sentence.” You have made “several request[s] directly to the Wisconsin Department of Corrections for these records” and “have yet to receive a response.”

The Attorney General and DOJ’s Office of Open Government (OOG) appreciate your concerns. DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Wisconsin Department of Corrections (DOC). DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

However, I did contact DOC to make them aware of your concerns, and I am also copying them on this letter.

Please note that as an individual who was incarcerated at the time you requested records, your right to request records under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, was limited to records that contain specific references to yourself or your minor children and were otherwise accessible to you by law. *See* Wis. Stat. §§ 19.32(1c) and (3). If the records you requested pertain to you or your minor children, you may request them pursuant to the public records law. You may also re-submit your public records request at any time, and if you are no longer incarcerated, additional records may be available to you. However, under the public records law, certain information may still be redacted from the records.

The public records law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. *See* Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must

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

It is important to note that the public records law states that no action for mandamus may be commenced by an incarcerated person later than 90 days after the date the request was denied. *See* Wis. Stat. § 19.37(1m). Incarcerated individuals 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 only 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 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 this contact information:

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 and maintains a Public Records Law Compliance Guide on its website.

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:lah

cc: Chief Legal Counsel, Wisconsin Department of Corrections



**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 17, 2021

Tim Jochman
timjochman@att.net

Dear Tim Jochman:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 22 and 28, 2020, January 16, 2021, and March 16, 2021, regarding your public records requests to the Wisconsin Department of Corrections (DOC). In your March 16, 2021, correspondence you wrote, "Upon reviewing the documents I received, I discovered vast disturbing discrepancies and inconsistencies. . . . It appears that these open records were not properly handled." You asked, "how we get these problems corrected."

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concerns. DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the DOC. DOJ strives to provide the public with guidance on the interpretation of our State's public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

However, I did contact DOC to make them aware of your concerns, and I am also copying them on this letter.

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). 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 and maintains a Public Records Law Compliance Guide on its website.

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, Wisconsin Department of Corrections



**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 17, 2021

Michael Leighton, # 239046
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768-6500

Dear Michael Leighton:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 11, 2020, in which you requested “resolution of two (2) Open Records Denials by the WI DOC.”

The Attorney General and DOJ’s Office of Open Government (OOG) appreciate your concerns. DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Wisconsin Department of Corrections (DOC). DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

However, I did contact DOC to make them aware of your concerns, and I am also copying them on this letter.

Please note that as an individual who is currently incarcerated, 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). If the records you requested pertain to you or your minor children, you may request them 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 provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. *See* Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish four things: “(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages

would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law.” *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

It is important to note that the public records law states that no action for mandamus may be commenced by an incarcerated person later than 90 days after the date the request was denied. *See* Wis. Stat. § 19.37(1m). Incarcerated individuals 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 only 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 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 this contact information:

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 and maintains a Public Records Law Compliance Guide on its website.

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:lah

cc: Chief Legal Counsel, Wisconsin Department of Corrections



**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 17, 2021

Annie Mattea
Marquette Wire
Marquette University
anne.mattea@marquette.edu

Dear Ms. Mattea:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 4, 2020, regarding your public records request to the Marquette University Police Department (MUPD) for records related to “alleged internal misconduct by employees of the [MUPD],” including “incident reports, termination meeting notes, and other related files.” You wrote, “This request was denied by MUPD, who cited that ‘any MUPD employees that may be the subject of internal investigations are private employees of the university and not public employees.’” You requested DOJ “review this request and review whether the denial falls in line with the open records law in Wisconsin.”

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 your specific questions regarding Wis. Stat. § 175.42(2)(b)1 are outside this scope. Therefore, we are unable to offer you assistance on statutes that are outside the scope of the OOG’s responsibilities.

However, we can address your correspondence to the extent it concerns the public records law. The 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 Wisconsin public records law defines an “authority” as any of the following having custody of a record:

a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or

quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 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.

As can be seen by this definition, a “university police department under s. 175.42” is an “authority” under the public records law. *See* Wis. Stat. § 19.32(1). As is pertinent to your inquiry, Wis. Stat. § 175.42 is the statute regarding MUPD, thereby making MUPD an “authority” as defined by the public records law. Further, “employee” is defined by the public records law, in part, as “any individual who is employed by an authority.” *See* Wis. Stat. § 19.32(1bg); *Moustakis v. State of Wisconsin Dep't of Justice*, 2016 WI 42, ¶¶ 31-32, 368 Wis. 2d 677, 880 N.W.2d 142. Therefore, records pertaining to “employees” of the “authority” (here, MUPD) would be subject to disclosure.

That a record is subject to disclosure, however, does not necessarily mean that it will be disclosed. 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).

Turning now to your questions about your public records request, I contacted Marquette University’s General Counsel’s Office to make them aware of your concerns, and to learn more about the basis for the denial of your request. I spoke with Senior Associate General Counsel Jeff Kipfmueller who informed that the employee who handled your request is no longer employed at Marquette University. Therefore, he was unable to ask that employee for additional information about the rationale for the denial. However, Attorney Kipfmueller indicated that Marquette University and MUPD wanted to work with DOJ to resolve the matter. Based on our discussion, he agreed with the OOG’s determinations that MUPD is an authority, and that the potentially responsive records should be reviewed again to determine which records could be released to you.

Attorney Kipfmueller also agreed that they would contact you for any questions or clarifications about your request, if they have not already done so, and that they would keep you apprised of the status of your request periodically, as they are reviewing the records. The

Office of Open Government encourages this kind of open communication between authorities and requesters to help avoid misunderstandings.

It is often mutually beneficial for a requester and an authority to work with each other regarding a request. This can provide for a more efficient processing of a request by the authority while ensuring that the requester receives the records that he or she seeks. Further, if it becomes apparent to an authority that a public records request may require a longer response time, it may be prudent for the authority to send the requester a letter providing an update on the status of the response and, if possible, indicating when a response might be anticipated. Similarly, if an authority receives an inquiry from a requester seeking an update on the status of the request, it is advisable for the authority to respond to the requester with an update.

In short, based on the information available to me, it appears that your concerns have already been or will soon be resolved, and DOJ expects that this issue will not recur in the future. If you have any additional concerns or questions about this information, please feel free to contact the Office of Open Government.

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for denying the written request. Wis. Stat. § 19.35(4)(b). 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. 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 noted above, however, we contacted the Marquette University General Counsel’s Office, which has agreed to review the records potentially responsive to your request, and keep you apprised of their progress with periodic status updates.

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 and maintains a Public Records Law Compliance Guide on its website.

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: Marquette University Office of Legal Counsel



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 17, 2021

Mark Peterson

[REDACTED]
Pulaski, WI 54162

Dear Mark Peterson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 7, 2020, regarding your “June and August 2019” public records requests to the Wisconsin Department of Corrections (DOC). You wrote that you “received two pages of emails” but that you believe “more documents exist.” You requested “a more thorough search of [your] open records request to insure [sic] its integrity.”

The Attorney General and DOJ’s Office of Open Government (OOG) appreciate your concerns. DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the DOC. DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

However, I did contact DOC to make them aware of your concerns, and I am also copying them on this letter.

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). It appears from your correspondence that you contacted Dane County District Attorney Ismael Ozanne to request

an action for mandamus. 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/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 and maintains a Public Records Law Compliance Guide on its website.

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, Wisconsin Department of Corrections



**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

September 17, 2021

James Timberlake

[REDACTED]
Madison, WI 53704
timberlj@gmail.com

Dear James Timberlake:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 15, 2020, 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 University of Wisconsin-Madison Police Department (UWPD).” You wrote that “the UWPD has denied providing information related to (a) the equipment their officers have used against the public and (b) the equipment and supplies the department has recently purchased.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the UWPD. DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

While DOJ is unable offer legal advice or counsel in this instance, 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. 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 and maintains a Public Records Law Compliance Guide on its website.

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,

A handwritten signature in blue ink that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF: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 17, 2021

Jay Walsh
jaymartinwalsh@gmail.com

Dear Jay Walsh:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 2, 2020, regarding your public records request to the Wisconsin Department of Corrections (DOC). You wrote, “i recently secured an open record from the d.o.c. . . . however, the record is largely redacted.” You requested DOJ “help [you] obtain the full report.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the DOC. DOJ strives to provide the public with guidance on the interpretation of our State’s public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

However, I did contact DOC to make them aware of your concerns, and I am also copying them on this letter.

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). 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 and maintains a Public Records Law Compliance Guide on its website.

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, Wisconsin Department of Corrections



**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

September 27, 2021

Rosemarie Annonson
spit_fires@hotmail.com

Dear Rosemarie Annonson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 8, 2021, regarding the “state public defenders offices.” You asked, “[W]hat can you tell me about this nine member board[.]” You added, “I want to attend their next meeting and I want to get on the agenda.” You also wrote, “As for local open records,” when you “request info” you are told “we don’t have a file and were not required to compose one for you.” You “can’t get any statistical data they report they don’t collect the data.”

The Attorney General and 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 a portion of your correspondence is outside this scope. The legal authority of the Attorney General and DOJ is specifically defined, and limited, by laws passed by the Wisconsin Legislature. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG’s legal authority and responsibilities. However, we can provide you with some general information about the public records law and open meetings law that you may find helpful.

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

The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give

notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

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).

For additional information on the notice requirements of the open meetings law, please see pages 14 through 19 of the Open Meetings Law Compliance Guide available through DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

In your correspondence, you wrote that you “want to get on the agenda.” While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body's meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak. If a governmental body decides to set aside a portion of an open meeting as a public comment period, this must be included in the meeting notice.

The 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).

When submitting a public records request, a requester should take care to ask for records containing the information they seek, as opposed to simply asking a question or asking for information. This is important because 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 is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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 you would like to learn more about the open meetings law and public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and public records law and maintains an Open Meetings Law Compliance Guide and a Public Records Law Compliance Guide on its website.

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 does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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

September 27, 2021

Dave Burke

[REDACTED]
Thorp, WI 54771
dtiburke@gmail.com

Dear Dave Burke:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 15, 2021, in which you asked, "Are school districts authorized to publish meeting minutes online instead of publishing in the local newspaper?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

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). 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. It 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).

As long as the body creates and preserves a record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied, and the open meetings law does not require the body to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89 (Mar. 8, 1989). *See, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Thus, as can be seen from the discussion above, the open meetings law itself does not require governmental bodies to publish meeting minutes online or in the local newspaper. However, the open meetings law would also not prohibit such practices. In the interest of government transparency, DOJ's Office of Open Government (OOG) encourages the dissemination of meeting minutes.

In short, the open meetings law does not dictate all procedural aspects of how bodies run meetings, including the drafting and dissemination of minutes. As noted above, other statutes outside the open meetings law may prescribe particular minute-taking or record-keeping requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. However, our office cannot advise you further on those statutes, as they fall outside the scope of the OOG's authority and responsibilities under the open meetings law. If meeting minutes have been created and you wish to receive them, you may submit a public records request for the minutes.

If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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. § 19.98 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

PMF: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

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

September 27, 2021

Robert Hatch
Post Office Box 361
Butte des Morts, WI 54927
rhatch@ntd.net

Dear Robert Hatch:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 23, 2020, in which you wrote, "I would like to file an Open Meetings complaint against the Winnebago County Board of Supervisors regarding their June monthly meeting, which was held remotely via Zoom." You continued, "I attempted to join this meeting via telephone as I desired to speak publicly to the board about a matter on the meeting agenda. I was denied access to the meeting as space was limited to 100 participants." You "request[ed] that the board be required to" hold "live, in-person meetings" as a "proper remedy to this violation."

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2). Similarly, an "open session" is defined in Wis. Stat. § 19.82(3) as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." A meeting must be preceded by notice providing the time, date, place, and subject matter of the meeting, generally, at least 24 hours before it begins. Wis. Stat. § 19.84. Every meeting of a governmental body must initially be convened in "open session." *See* Wis. Stat. §§ 19.83, 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in "open session," unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in

places that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 580-81, 494 N.W.2d 408 (1993). Absolute access is not, however, required. *Id.* In *Badke*, for instance, the Wisconsin Supreme Court concluded that a village board meeting that was held in a village hall capable of holding 55–75 people was reasonably accessible, although three members of the public were turned away due to overcrowding. *Id.* at 561, 563, 581. Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any doubt as to whether a meeting facility—or remote meeting platform—is large or sufficient enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility or with a remote meeting platform with sufficient capacity.

The open meetings law “does not require that all meetings be held in publicly owned places but rather in places ‘reasonably accessible to members of the public.’” 69 Op. Att’y Gen. 143, 144 (1980) (quoting 47 Op. Att’y Gen. 126 (1978)). As such, DOJ’s longstanding advice is that a telephone conference call can be an acceptable method of convening a meeting of a governmental body. *Id.* at 146. More recently, DOJ guidance deemed video conference calls acceptable as well.

When an open meeting is held by teleconference or video conference, the public must have a means of monitoring the meeting. In March 2020, DOJ issued two advisories regarding COVID-19 and the open meetings law.¹ DOJ concluded that, under the circumstances present during the pandemic, a governmental body will typically be able to meet this obligation by providing the public with information (in accordance with notice requirements) for joining the meeting remotely, even if there is no central location at which the public can convene for the meeting. A governmental body conducting a meeting remotely should be mindful of the possibility that it may be particularly burdensome or even infeasible for one or more individuals who would like to observe a meeting to do so remotely—for example, for people without telephone or internet access or who are deaf or hard of hearing—and appropriate accommodations should be made to facilitate reasonable access to the meeting for such individuals.

To be clear, providing only remote access to an open meeting is not always permissible, as past DOJ guidance discussed. For example, where a complex plan, drawing, or chart is needed for display or the demeanor of a witness is significant, a meeting held by telephone conference likely would not be “reasonably accessible” to the public because important aspects of the discussion or deliberation would not be communicated to the public. *See* 69 Op. Att’y Gen. at 145. Further, the type of access that constitutes reasonable access in the circumstances present during the pandemic, in which health officials have encouraged social distancing in order to mitigate the impact of COVID-19, may be different from the type of access required in other circumstances. Ultimately, whether a meeting is “reasonably accessible” is a factual question that must be determined on a case-by-case basis. *Id.*

¹ DOJ issued a third advisory in March 2021. All three advisories are available on DOJ’s Office of Open Government webpage at <https://www.doj.state.wi.us/office-open-government/office-open-government>.

In your correspondence, you wrote that you wished to speak publicly to the board regarding a matter on the meeting agenda. While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body's meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak. If a governmental body decides to set aside a portion of an open meeting as a public comment period, this must be included in the meeting notice.

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. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, DOJ respectfully declines to file an enforcement action on your behalf 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).

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>

Robert Hatch

Page 4

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 open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF: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

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

September 27, 2021

Michael Kraft

[REDACTED]
Fond du Lac, WI 54935
mlkfdl@charter.net

Dear Michael Kraft:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 22, 2020, in which you wrote, “[I] asked the city attorney of [F]ond du [L]ac if funds spent on city owned houses was a matter of public record, [I] have been ignored.”

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).

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

Whether material is a “record” subject to disclosure under the public records law depends on whether the record is created or kept in connection with the official purpose or function of the agency. *See* OAG I-06-09, at 2 (Dec. 23, 2009). Not everything a public official or employee creates is a public record. The substance or content, not the medium, format, or location, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470 (1965).

When submitting a public records request, a requester should take care to ask for records containing the information they seek, as opposed to simply asking a question or asking for information. This is important because 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 is not required to create a new record by extracting and compiling information from existing records in a new format. *See Wis. Stat. § 19.35(1)(L)*. *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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.

You may wish to submit a public records request to the city of Fond du Lac asking for records that contain the information you seek.

If you would like to learn more about the public records law, DOJ’s Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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 does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

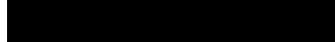
Josh Kaul
Attorney General

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

September 27, 2021

Theresa Smith



Florence, WI 54121
Farmingintheusa@outlook.com

Dear Theresa Smith:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 22 and 30, 2020, in which you asked, “Can you tell me how town board meeting minutes get published. Is there a time frame? Is it internet only? What is the process?” You also wrote, “I haven’t seen the last few months of town board open meetings minutes” and you are “wondering if internet has replaced hard copies.”

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

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). 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. It 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).

As long as the body creates and preserves a record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied, and the open meetings law does not require the body to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. *I-20-89* (Mar. 8, 1989). *See, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county

clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Thus, as can be seen from the discussion above, the open meetings law itself does not require governmental bodies to publish minutes or to post minutes online. However, the open meetings law also does not prohibit such practices. In the interest of government transparency, DOJ Office of Open Government (OOG) encourages the dissemination of meeting minutes.

In short, the open meetings law does not dictate all procedural aspects of how bodies run meetings, including the drafting and dissemination of minutes. As noted above, other statutes outside the open meetings law may prescribe particular minute-taking or record-keeping requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. However, our office cannot advise you further on those statutes, as they fall outside the scope of the OOG's authority and responsibilities under the open meetings law. If meeting minutes have been created and you wish to receive them, you may submit a public records request for the minutes.

If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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. § 19.98 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

PMF: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 28, 2021

Samantha DeMars

[REDACTED]
Monticello, WI 53570
demars.e.s@gmail.com

Dear Samantha DeMars:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 24, 2020, regarding concerns that “[y]our local Village government is not in compliance with the state statutes of holding a public meeting.” You wrote, “The meetings are not being posted or given notice in three different locations within the jurisdiction of Monticello. . . . the community does not have knowledge of the meetings and what is going on within the community.”

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

It is important to note that notice to the public, notice to news media, and notice to the official newspaper are separate requirements. First, as to the public notice, communication from the chief presiding officer of a governmental body or such person’s designee shall be made to the public using one of the following methods: 1) Posting a notice in at least 3 public places likely to give notice to persons affected; 2) Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body’s Internet site; or 3) By paid publication in a news

medium likely to give notice to persons affected. Wis. Stat. § 19.84(1)(b). If the presiding officer gives notice in the third manner, he or she must ensure that the notice is actually published.

Second, as to the notice to the news media, the chief presiding officer must give notice of each meeting to members of the news media who have submitted a written request for notice. Wis. Stat. § 19.84(1)(b); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶¶ 3–4, 7, 278 Wis. 2d 388, 692 N.W.2d 304. Although this notice may be given in writing or by telephone, it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. *See* 65 Op. Att’y Gen. Preface, v–vi (1976); 65 Op. Att’y Gen. 250, 251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. *See* 77 Op. Att’y Gen. 312, 313 (1988).

Third, as to the notice to the newspaper, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b). The governmental body is not required to pay for, and the newspaper is not required to publish, such notice. *See* 66 Op. Att’y Gen. 230, 231 (1977). As noted above, however, the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published. *See* Mallin Correspondence (Mar. 14, 2016).

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

When calculating the twenty-four hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is, therefore, inadequate, but posting such notice on the proceeding Saturday would suffice, as long as the posting location is open to the public on Saturdays. Caylor Correspondence (Dec. 6, 2007).

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).

Based on the limited information in your correspondence, DOJ cannot determine whether the town has complied with the open meetings law’s public notice requirements. It is worth noting, however, that the options for providing public notice were changed by the

legislature in March 2020 and can now be provided in one of three ways under Wis. Stat. § 19.84(1)(b). As discussed above, it is now sufficient for a governmental body to publicly post the meeting notice “in at least 3 public places” **or** “in at least one public place and ... electronically on the governmental body’s Internet site,” **or** “[b]y paid publication.”

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 file an enforcement action on your behalf.

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney’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 open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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,

A handwritten signature in blue ink that reads "Sarah K. Larson". The signature is fluid and cursive, with the first name "Sarah" being the most prominent.

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

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

September 29, 2021

Elizabeth Koch

[REDACTED]
Burlington, WI 53105
bethkoch23@gmail.com

Dear Elizabeth Koch:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 30, 2020 and July 9, 2020, in which you wrote, “The [Town of Wheatland] has put out to bid back in 2018 for a new fire station and after requesting the bid documents via FOIA, I received incomplete documents and found the bidding process to be very inconsistent with what I understand the state statute for government bodies to uphold.” You added, “Please help us by looking into this matter.”

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 limited information you provided, it appears that some of the subject matter of your correspondence, regarding the bidding process by the Town of Wheatland Board, is outside this scope. The legal authority of the Attorney General and DOJ is specifically defined, and limited, by laws passed by the Wisconsin Legislature. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG’s legal authority and responsibilities.

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

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 denying the written request. Wis. Stat. § 19.35(4)(b). 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. 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 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 and maintains a Public Records Law Compliance Guide on its website.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF: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

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

September 29, 2021

James Peirce

[REDACTED]
Wautoma, WI 54982
jcpeirce@juno.com

Dear James Peirce:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 25, 2020, in which you wrote, “I can find where notice to an annual meeting for a Lake District must be mailed out 14 days before. But I can not [*sic*] find anything about a board meeting notice. Can email be used, 14 days before? Does an agenda need to be included in the notice for a board meeting?”

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The 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). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).

It is important to note that notice to the public, notice to news media, and notice to the official newspaper are separate requirements. First, as to the public notice, communication from the chief presiding officer of a governmental body or such person's designee shall be made to the public using one of the following methods: 1) Posting a notice in at least 3 public places likely to give notice to persons affected; 2) Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's Internet site; or 3) By paid publication in a news medium likely to give notice to persons affected. Wis. Stat. § 19.84(1)(b). If the presiding officer gives notice in the third manner, he or she must ensure that the notice is actually published.

Second, as to the notice to the news media, the chief presiding officer must give notice of each meeting to members of the news media who have submitted a written request for notice. Wis. Stat. § 19.84(1)(b); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶¶ 3–4, 7, 278 Wis. 2d 388, 692 N.W.2d 304. Although this notice may be given in writing or by telephone, it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. *See* 65 Op. Att'y Gen. Preface, v–vi (1976); 65 Op. Att'y Gen. 250, 251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. *See* 77 Op. Att'y Gen. 312, 313 (1988).

Third, as to the notice to the newspaper, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b). The governmental body is not required to pay for, and the newspaper is not required to publish, such notice. *See* 66 Op. Att'y Gen. 230, 231 (1977). As noted above, however, the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published. *See* Mallin Correspondence (Mar. 14, 2016).

In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body. However, those statutes fall outside of the scope of the authority and responsibilities of DOJ's Office of Open Government (OOG) under the Wisconsin Open Meetings Law. Therefore, we are unable to offer you assistance regarding other statutes that are outside the scope of the OOG's responsibilities.

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).

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. If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

Thank you for your correspondence. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals' open government questions. The PROM telephone number is (608) 267-2220.

The information provided in this letter 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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

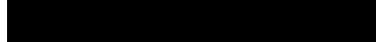
Josh Kaul
Attorney General

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 29, 2021

Marion Shaw



Hudson, WI 54016

Dear Marion Shaw:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 3, 2020, in which you asked DOJ “to find an open meeting held in the Town of Hudson on June 2nd at 6:30 PM to be found in violation of Wisconsin’s Open Record Laws.” You requested “that the penalty of \$300 be assessed to the Chairman of the Town of Hudson Board who knowingly and willfully closed the town hall for purposes of this meeting and withheld any other place to attend this meeting.”

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times.” Wis. Stat. § 19.81(2). Similarly, an “open session” is defined in Wis. Stat. § 19.82(3) as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” A meeting must be preceded by notice providing the time, date, place, and subject matter of the meeting, generally, at least 24 hours before it begins. Wis. Stat. § 19.84. Every meeting of a governmental body must initially be convened in “open session.” *See* Wis. Stat. §§ 19.83, 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in “open session,” unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

The open meetings law “does not require that all meetings be held in publicly owned places but rather in places ‘reasonably accessible to members of the public.’” 69 Op. Att’y Gen. 143, 144 (1980) (quoting 47 Op. Att’y Gen. 126 (1978)). As such, DOJ’s longstanding advice is that a telephone conference call can be an acceptable method of convening a meeting of a

governmental body. *Id.* at 146. More recently, DOJ guidance deemed video conference calls acceptable as well.

When an open meeting is held by teleconference or video conference, the public must have a means of monitoring the meeting. A governmental body will typically be able to meet this obligation by providing the public with information (in accordance with notice requirements) for joining the meeting remotely, even if there is no central location at which the public can convene for the meeting. A governmental body conducting a meeting remotely should be mindful of the possibility that it may be particularly burdensome or even infeasible for one or more individuals who would like to observe a meeting to do so remotely—for example, for people without telephone or internet access or who are deaf or hearing impaired—and appropriate accommodations should be made to facilitate reasonable access to the meeting for such individuals.

To be clear, providing only remote access to an open meeting is not always permissible, as past DOJ guidance shows. Where a complex plan, drawing, or chart is needed for display or the demeanor of a witness is significant, a meeting held by telephone conference likely would not be “reasonably accessible” to the public because important aspects of the discussion or deliberation would not be communicated to the public. *See* 69 Op. Att’y Gen. at 145. Further, the type of access that constitutes reasonable access in the circumstances present for the meeting held on June 2, 2020, in which health officials were encouraging social distancing (including avoiding large public gatherings) in order to mitigate the impact of COVID-19, may be different from the type of access required in other circumstances. Ultimately, whether a meeting is “reasonably accessible” is a factual question that must be determined on a case-by-case basis. *Id.*

Due to the limited information provided in your correspondence, DOJ is unable to determine whether the Town of Hudson Board meeting held on June 2, 2020 was “reasonably accessible” to the public. Other than your two allegations that the town chair “willfully and knowingly” closed the town hall, and “withheld any other place to attend this meeting,” you have not provided any further information in your correspondence about the meeting in question. I note, however, that we had a telephone conversation shortly after the meeting in question, on September 3, 2020, in which we discussed the same matter. I advised you about the open meetings law’s requirements during COVID-19, and I also provided you information about your options for enforcement. I will provide that information again to you, below, for your information.

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 file an enforcement action on your behalf.

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).

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

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

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

The Attorney General and 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 open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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,

A handwritten signature in blue ink that reads "Sarah K. Larson". The signature is fluid and cursive, with a stylized "S" and "L".

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

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

September 29, 2021

Justin Weeks

[REDACTED]
Waupun, WI 53963-2165
WEEKJUS@gmail.com

Dear Justin Weeks:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 15, 2020, in which you asked, “[I]s there a law that states that only a township chairman can put items on a[n] agenda for a township[?]” You wrote, “[W]e have a chairman that says the statue states that he is the only one who can make or add items onto the agenda. . . . [I] thought public taxpayers can request items be put on.”

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 ensures public access to and notice of meetings of governmental bodies. The open meetings law does not dictate all procedural aspects of how bodies run meetings, including the process of deciding what items should be added to a meeting’s agenda.

While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body’s meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak.

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

If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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 does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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 30, 2021

James Maurer

[REDACTED]
Milwaukee, WI 53208-3112
coolstuf45@sbcglobal.net

Dear James Maurer:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 24, 2021 and May 12, 2021 regarding alleged open meetings law violations.

The Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The OOG is only authorized to provide assistance within this scope.

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 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).

With respect to notice, the open meetings law provides for the level of specificity required in agenda items for open and closed meetings, as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of a meeting must provide the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session." *Id.* The notice must be in such a form so as to reasonably apprise the public of this information. *Id.*

The concerns you outline in your May 12, 2021 correspondence—that the "agenda packet" for the April 12, 2021 meeting of the Wauwatosa Plan Commission was "so large that it was impossible to review"—fall outside the scope of the open meetings law. Although the open meetings law governs public access to meetings of governmental bodies, including notice requirements, the open meetings law does not dictate all procedural aspects of how bodies run meetings, including the process of deciding what items should be added to a meeting's

agenda or the materials that are available for review in an “agenda packet.” Other laws may dictate those procedures, but the OOG cannot advise you on those matters, as they fall outside of the scope of the OOG’s statutory authority and responsibilities.

We can, however, address your April 24, 2021 correspondence, in which you wrote, “I am writing to submit my official complaint against Wauwatosa Mayor Dennis McBride for possible Open Meetings law violations. Mayor McBride presided over the April 12, 2021 meeting of the Wauwatosa Plan Commission. . . . people were trying to attend this Zoom meeting but were unable to. He adjourned the meeting briefly so that people could ‘reboot’. This action did not work for all the people trying to attend the meeting. Instead of rescheduling the meeting he proceeded” with the meeting. You are “concerned that members of the public will not be able to participate” in future meetings.

The open meetings law requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times.” Wis. Stat. § 19.81(2). Similarly, an “open session” is defined in Wis. Stat. § 19.82(3) as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” A meeting must be preceded by notice providing the time, date, place, and subject matter of the meeting, generally, at least 24 hours before it begins. Wis. Stat. § 19.84. Every meeting of a governmental body must initially be convened in “open session.” See Wis. Stat. §§ 19.83, 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in “open session,” unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

The open meetings law “does not require that all meetings be held in publicly owned places but rather in places ‘reasonably accessible to members of the public.’” 69 Op. Att’y Gen. 143, 144 (1980) (quoting 47 Op. Att’y Gen. 126 (1978)). As such, DOJ’s longstanding advice is that a telephone conference call can be an acceptable method of convening a meeting of a governmental body. *Id.* at 146. More recently, DOJ guidance deemed video conference calls acceptable as well.

When an open meeting is held by teleconference or video conference, the public must have a means of monitoring the meeting. DOJ concludes that, under the circumstances present during the April 2021 meeting, a governmental body will typically be able to meet this obligation by providing the public with information (in accordance with notice requirements) for joining the meeting remotely, even if there is no central location at which the public can convene for the meeting. A governmental body conducting a meeting remotely should be mindful of the possibility that it may be particularly burdensome or even infeasible for one or more individuals who would like to observe a meeting to do so remotely—for example, for people without telephone or internet access or who are deaf or hard of hearing—and appropriate accommodations should be made to facilitate reasonable access to the meeting for such individuals.

To be clear, providing only remote access to an open meeting is not always permissible, as past DOJ guidance shows. Where a complex plan, drawing, or chart is needed for display or the demeanor of a witness is significant, a meeting held by telephone conference likely would not be “reasonably accessible” to the public because important aspects of the discussion

or deliberation would not be communicated to the public. *See* 69 Op. Att’y Gen. at 145. Further, the type of access that constitutes reasonable access in the circumstances present for the April 2021 meeting, in which health officials were encouraging social distancing (including avoiding large public gatherings) in order to mitigate the impact of COVID-19, may be different from the type of access required in other circumstances. Ultimately, whether a meeting is “reasonably accessible” is a factual question that must be determined on a case-by-case basis. *Id.*

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. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, we respectfully decline to file an enforcement action on your behalf 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).

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney’s fees. You may reach the service using the contact information below:

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

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

The Attorney General and 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 open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:lah