

2023 2nd Quarter Correspondence

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**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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April 6, 2023

Michael LeRoy
mhl@illinois.edu

Dear Michael LeRoy:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 3, 2023, regarding your public records request to the University of Wisconsin-Madison (UW-Madison) for “information related to the ‘Big Ten media rights contract.’” You wrote, “Pursuant to Wis. Stat. 1937(1)(b), I appeal the University of Wisconsin-Madison’s Response to FOIA Request P002709-03523.” DOJ has reviewed the “corrected copy of [your] appeal” that you provided.

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.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the 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.

However, I contacted the UW-Madison and made them aware of your concerns. I am also copying them on this letter.

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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: University of Wisconsin – Madison, Office of Legal Affairs



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April 11, 2023

Kimberly Mahoney
kimmahoney69@gmail.com

Dear Kimberly Mahoney:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 10, 2021, in which you wrote, "This letter is to request that you initiate a mandamus action against the Village of Mount Pleasant to require that it produce public records pursuant to my public records requests."

You copied DOJ on correspondence between yourself and Village of Mount Pleasant Attorney Chris Smith regarding your public records request. On June 25, 2021, in response to your request, Attorney Smith stated, "I have received your modified request. We will begin to process it as soon as possible. However, I must correct your impression that these records need no review prior to disclosure. On the contrary, I must conduct a review of these records to ensure any privileged or otherwise exempt records are not disclosed. . . . I anticipate that it will be a lengthy process due to the sheer number of records because I have a myriad of other duties in addition to handling this specific request." I spoke with the Village of Mount Pleasant Attorney regarding your request and he confirmed that the request was completed on August 19, 2021. However, I will still provide you with some general public records law information that may be helpful for future reference.

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the public records law, it also discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding matters outside the OOG's scope. We can, however, provide you with some general information about the public records law that we hope you will find helpful.

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).

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute

right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

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

The public records law “does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester.” *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, 55 (citation omitted); see also *State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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

The public records law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish four things: “(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if

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

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

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

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

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

The information provided in this letter 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,



Jad M. Itani
Assistant Attorney General
Office of Open Government



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 11, 2023

Dontay Reese, #80510
30 N. 3rd Street
Black River Falls, WI 54615

Dear Dontay Reese:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 28, 2023, in which you asked DOJ to review a petition for writ of mandamus regarding your public records request to the Jackson County Sheriff's Office (Sheriff). You wrote that you have "been denied the records, in that, no response has come from [the Sheriff] in six months."

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).

First, please note that as an individual who is currently incarcerated, your right to request records under the public records law 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.

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of

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

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

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

While the public records law requires an authority to fill a request or notify the requester of a determination to deny a request, the law does not require an authority to respond to a requester if the authority has no records responsive to a request. However, DOJ advises that an authority notify a requester if they have no responsive records. *Journal Times v. City of Racine Bd. of Police & Fire Comm’rs*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, ¶ 102, 866 N.W.2d 563.

I contacted the Sheriff’s Office to gather additional information. However, I was advised that there is pending litigation and they cannot provide me any information pertaining to your request. I presume that you have filed a mandamus action. However, in the event that your litigation is unrelated, I have provided you the below information informing you of your rights.

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, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, we respectfully decline to pursue an action for mandamus on your behalf at this time.

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

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

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



STATE OF WISCONSIN
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April 14, 2023

Jacob Gubin
jacob.gubin@yahoo.com

Dear Jacob Gubin:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 1, 2023, regarding your public records request to the Fond du Lac police department for “a recorded session with a de[t]ective.” On February 3, 2023, DOJ received a writ of mandamus regarding “a request for a police report from Fond [d]u Lac Police Department” regarding “[c]losed [c]ase 22CV383.” In your correspondence dated March 31, 2023, you asked “for assistance for a writ of mandamus for a police report cited in closed case 22CV383, that there was no order to withhold and I was not served.” You wrote, “I have also been notified by the Fond du Lac Police Department I need a writ of mandamus to get the Information I requested regarding an off duty Officer contacting me (via email).”

I contacted the Fond du Lac Police Department and the City Attorney’s office regarding your requests, and I am also copying them on this letter. The City Attorney’s office stated that on February 25, 2023, it provided you with responsive records pertaining to your request for “a copy of a police report from Officer Vang involving myself” As to your request for “[c]losed [c]ase 22CV383,” the City Attorney’s office said they reviewed their files and found that you had made a series of requests pertaining to case 22CV383 and you were advised on January 13, 2023, that the City Attorney’s office had no responsive records and are not the records custodians for Circuit Court records. You may wish to contact the Clerk of Court of the relevant county, a separate authority under the public records law, regarding your request. However, I am still providing you some general public records law information that you may find helpful.

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).

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balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test, determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

Whether an investigation or litigation is ongoing and whether the confidentiality of the requested records is material to that ongoing investigation or litigation are factors that an authority may consider in applying the balancing test. Cf. *Linzmeier v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811; *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 824-27, 429 N.W.2d 772 (Ct. App. 1988); *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584. An authority could determine that release of records while an investigation or litigation is in progress could compromise the investigation or litigation. Therefore, when performing the public records balancing test, an authority could conclude that the public interest in effectively investigating and litigating a case and in protecting the integrity of the current investigation or litigation outweighs the public interest in disclosing the requested records at that time. *Id.*; Wis. Stat. § 19.35(1)(a).

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

DOJ is also in receipt of your correspondence, dated December 22, 2022, in which you asked, “Are the details of case 2019CM78 / DA case number 2019FL65 available for open records?” There is a general presumption that “public records shall be open to the public unless there is a clear statutory exception, unless there exists a limitation under the common law, or unless there is an overriding public interest in keeping the public record confidential.” *Hathaway v. Joint Sch. Dist. No. 1, City of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). However, access to prosecutors’ case files, whether open or closed, are exempt from disclosure. The Wisconsin Supreme Court has determined that “the common law provides an exception which protects the district attorney’s files from being open to public inspection.” *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 433-34, 477 N.W.2d 608 (1991); see also *Democratic Party of Wis. v. Wis. Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584. Therefore, if the records you seek are part of the prosecutor’s file, such records may be exempt from disclosure under the public records law.

The public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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

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

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a large, sweeping flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: Fond du Lac City Attorney's Office



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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April 19, 2023

Carrie Meindle
carriayncm@gmail.com

Dear Carrie Meindle:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 8, 2022, in which you wrote, “It has come to my attention that Manitowoc Sheriff’s office is making a profit on fulfilling FOIA Requests. They are charging for PRINTED paper copies to be sent . . . via email. Whereas they only charge 15 dollars to reproduce photos onto a flash drive. When asking them to reduce the price by putting the records on a flash drive which they are capable of doing as they send them email. They feel the need to charge 25 cents per page to put it in the pdf.” You “want to know how the Manitowoc County Sheriff gets away with over charging and making a profit on the files that the DOJ sends for free.”

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the public records law, it also discussed a matter outside the scope of the OOG’s responsibilities. As a result, we are unable to offer you assistance or insight regarding your request for an audit to see “how much profit [Manitowoc County Sheriff’s Office] is making on copies of records.” We can, however, provide you with some general information about the public records law that we hope you will find helpful.

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.”

Under the public records law, “[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs of *four specific tasks*: (1) ‘reproduction and transcription’; (2) ‘photographing and photographic processing’; (3) ‘locating’; and (4) ‘mailing or shipping.’”

Milwaukee Journal Sentinel v. City of Milwaukee, 2012 WI 65, ¶ 54, 341 Wis. 2d 607, 815 N.W.2d 367 (citation omitted) (emphasis in original). The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREData, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e).

The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f). Generally, the rate for an actual, necessary, and direct charge for staff time should be based on the pay rate (including fringe benefits) of the lowest paid employee capable of performing the task. For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law, which was issued on August 8, 2018, and can be found on DOJ's Website https://www.doj.state.wi.us/sites/default/files/news-media/8.8.18_OOG_Advisory_Fees_0.pdf.

There may be other laws outside of the public records law establishing fees for the records in question, potentially rendering those fees permissible under the public records law. See Wis. Stat. § 19.35(3) (allowing fees outside the public records law if those fees are established by another law). However, the Office of Open Government (OOG) is unable to offer you assistance regarding other laws that are outside the scope of the OOG's responsibilities and authority under the public records law.

If a requester appears personally to request a copy of a record, Wis. Stat. § 19.35(1)(b) requires that copies of written documents be “substantially as readable” as the original. *Lueders v. Krug*, 2019 WI App 36, ¶ 6, 388 Wis. 2d 147, 931 N.W.2d 898. Wisconsin Stat. § 19.35(1)(c) and (d) also require that audiotapes be “substantially as audible,” and copies of videotapes be “substantially as good” as the originals.

By analogy, providing a copy of an electronic document that is “substantially as good” as the original is a sufficient response where the requester does not specifically request access in the original format. See *WIREData, Inc. v. Vill. of Sussex* (“*WIREData II*”), 2008 WI 69, ¶¶ 97–98, 310 Wis. 2d 397, 751 N.W.2d 736 (provision of records in PDF format satisfied requests for records in “electronic, digital” format); *State ex rel. Milwaukee Police Ass’n v. Jones*, 2000 WI App 146, ¶ 10, 237 Wis. 2d 840, 615 N.W.2d 190 (holding that provision of an analog copy of a digital audio tape (“DAT”) complied with Wis. Stat. § 19.35(1)(c) by providing a recording that was “substantially as audible” as the original); see also *Autotech Techs. Ltd. P’ship v. Automationdirect.com, Inc.*, 248 F.R.D. 556, 558 (N.D. Ill. 2008) (where litigant did not specify a format for production during civil discovery, responding party had option of providing documents in the “form ordinarily maintained or in a reasonably usable form”).

Wisconsin Stat. § 19.36(4) provides, however, that material used as input for or produced as the output of a computer is subject to examination and copying. *Jones* ultimately held that, when a requester specifically asked for the original DAT recording of a 911 call, the custodian did not fulfill the requirements of Wis. Stat. § 19.36(4) by providing only the analog copy. *Jones*, 2000 WI App 146, ¶ 17.

In *WIREData II*, the Wisconsin Supreme Court declined to address the issue of whether the provision of documents in PDF format would have satisfied a subsequent request specifying in detail that the data should be produced in a particular format which included fixed length, pipe delimited, or comma-quote outputs, leaving open the question of the degree to which a requester can specify the precise electronic format that will satisfy a record request. *WIREData II*, 2008 WI 69, ¶¶ 8 n.7, 93, 96.

Nevertheless, the court of appeals has provided some guidance in *Lueders* on whether an authority needs to provide records in a format specified by the requester, holding that the requester in that case was “entitled to the e-mails in electronic form” when the request was for emails “in electronic form.” *Lueders*, 2019 WI App 36, ¶ 15. The court also stated that the authority must provide “electronic copies,” not paper copies of records, to a requester who asks for records in electronic format. *Id.*

DOJ’s Public Records Request Fee Schedule, which includes DOJ’s costs for copying records from a digital to a digital format (e.g., email), is available at <https://www.doj.state.wi.us/sites/default/files/office-open-government/fee-schedule-final.pdf>, and the Manitowoc County Sheriff’s Office may find this a helpful resource. I did contact the Manitowoc County Sheriff’s Office 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). The Attorney General is authorized to enforce the public records law; however, the Attorney General normally 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:

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

The information provided in this letter 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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: Manitowoc County Sheriff's Office



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

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**Jad M. Itani
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FAX 608/267-2779

April 20, 2023

Anthony Kudingo, #523057
Columbia Correctional Institution
Post Office Box 950
Portage, WI 53901-0950

Dear Anthony Kudingo:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 31, 2022, in which you stated, "I write to seek assistance to recover D.O.C. records I've requested per open records." You wrote, "I have not received any [of the] above Doc-44's that I was told 'exist.'" You asked "for help to compel the D.O.C. to turn over these records without delay."

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 the DOC to make them aware of your concerns. DOC stated that they reviewed your file and that they provided you with all the responsive records they had.

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.

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:

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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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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April 20, 2023

Judy Steffes
judy@WashingtonCountyInsider.com

Dear Judy Steffes:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 23, 2022, in which you wrote, “My efforts to bring the public meetings in the city of West Bend to the WCI audience have never been fully welcomed by the City of West B[e]nd . . . there has been a lack of cooperation, and even resistance, by our local City Council with my live streaming of public meetings to the WCI website.” You have “asked the City to turn up the volume on the overhead speakers in the council chambers.” You wrote, “that hasn’t been done so there is no-to-low volume when I do sit in council chambers and try to stream the broadcast. I used to be able to do this – and now I can’t.” You also state you have “asked for a stronger Wi-Fi connection in the council chambers” and you “used to be able to live stream off the city signal and now [you] can’t.” You wrote, “Moving forward I would like public access to the sound system in the West Bend City Council Chambers. . . . I would also like firewalls to be removed so I can have clear access to a strong Wi-Fi signal to do my job appropriately.”

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the open meetings law, it also discussed a matter outside the scope of the OOG’s responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns regarding matters outside the OOG’s scope. We can, however, provide you with some general information about the open meetings law that we hope you will find helpful.

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

I contacted the City of West Bend City Council and discussed your concerns that fell within the OOG’s scope.

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, Wis. Stat. §§ 19.81 to 19.98, 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,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

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FAX 608/266-2779

April 24, 2023

Stephen Semo

[REDACTED]
Lannon, WI 53046

Dear Stephen Semo:

The Wisconsin Department of Justice (DOJ) is in receipt of your verified open meetings law complaint, dated October 20, 2021, against Village of Lannon then president Tom Gudex. You stated that Tom Gudex “attended a meeting” of the Village Board on March 9, 2020, “in violation of Wis. Stat. § 19.96 and state and federal stay at home orders from 3.1.2020 to 5.31.2020.”

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the open meetings law, it also discussed matters outside the scope of the OOG’s responsibilities. As a result, we are unable to offer you assistance or insight regarding matters outside the OOG’s scope. Further, the information provided in your verified complaint is insufficient to determine your precise open meetings law concerns. We can, however, provide you with some general information about the open meetings law that we hope you will find helpful.

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).

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). The Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, we respectfully decline to 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). 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:

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

The information provided in this letter 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,



Jad M. Itani
Assistant Attorney General
Office of Open Government



**STATE OF WISCONSIN
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Josh Kaul
Attorney General

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TTY 1-800-947-3529
FAX 608/267-2779

April 25, 2023

Carrie Meindle
carriayncm@gmail.com

Dear Carrie Meindle:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 29, 2022, in which you wrote, "I would like to know what the DOJ's requirement is for requesting FOIA'ed Police reports from an agency[.] Green Bay is trying to put in place a form used for records from the Motor Vehicle Department to request Police records." You asked, "Is there a place I can file a complaint against the OPEN RECORDS of Green Bay for trying to deter citizens from getting FOIA requests, by insisting on a form meant for records requests from the DMV?"

I did contact the Green Bay Police Department to make them aware of your concerns, and I am also copying them on this letter. The Green Bay Police Department stated that you were provided the report without a signed DPPA on March 29, 2022. Although it seems that your request may have already been fulfilled, I am still providing the below information that you may find helpful.

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."

A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). There are no "magic words" that are required, and no specific form is permitted to be required in order to submit a public records request. However, the request must be reasonably specific as to the subject matter and length of time involved. Wis. Stat. § 19.35(1)(h); *Schopper v. Gehring*, 210 Wis. 2d 208, 212-13, 565 N.W.2d 187 (Ct. App. 1997). Under the public records law, there is no requirement that a request must be made or fulfilled in person. *See* Wis. Stat. § 19.35(1)(i) ("Except as authorized under this paragraph, no request . . . may be refused because the

person making the request is unwilling to be identified or to state the purpose of the request”). Therefore, a requestor does not need to provide a reason for the requested records when making a public records request.

The requester generally does not need to identify himself or herself. *See* Wis. Stat. § 19.35(1)(i) (“Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request”). Thus, the public policy expressed in Wis. Stat. § 19.35(1)(i) is that a requester generally may remain anonymous. *See State ex rel. Ledford v. Turcotte*, 195 Wis. 2d 244, 252, 536 N.W.2d 130 (Ct. App. 1995). Consequently, because requesters generally may remain anonymous, the requester also generally would not need to identify himself or herself using his or her true identity. *See* Wis. Stat. § 19.35(1)(i).

However, exceptions to these general rules exist. For example, under Wis. Stat. § 19.35(1)(i), “[a] requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.” Additionally, “[a] legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.” *See* Wis. Stat. § 19.35(1)(k).

Further, certain substantive statutes, such as those concerning pupil records and patient health care records, may also restrict record access to specified persons. *See, e.g.*, Wis. Stat. § 118.125(1)(b) (pupil records); § 146.82 (patient health care records). Thus, when records of that nature are the subject of a public records request, the records custodian is permitted to confirm, before releasing the records, that the requester is someone statutorily authorized to obtain the requested records.

The public records law provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish four things: “(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law.” *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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

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

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: Green Bay Police Department



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608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

April 27, 2023

William Kovacic, 599394
Post Office Box 253
Coloma, WI 54930

Dear William Kovacic:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 3, 2023, in which you wrote, "I cannot get a copy of a public record, and I have been trying for over a year. Record in question is the verbatim record from 6-7-21, for Adams Co. cases 16-CF-267 and 17-CF-78." You asked DOJ to "contact all parties involved and find out what is going on." In your April 18, 2023, correspondence, you wrote, "This is a formal complaint against Juneau County Judge Paul Curran, his court reporter Nicole Gottschalk, his judicial assistant Chris Woggon and Juneau County Corporation Counsel David Lasker." You wrote they have "refused to comply with open records requests."

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 entities referenced in your correspondence. 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 the Director of State Courts office to make them aware of your concerns, and I am also copying them on this letter.

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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: Director of State Courts



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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P.O. Box 7857
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www.doj.state.wi.us

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

June 8, 2023

Stephen Matty
stephenfmatty@gmail.com

Dear Stephen Matty:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 3, 2023, in which you wrote, "State patrol has refused to honor my public records request from Feb, 27, 2023. They acknowledged the request but have done nothing since then. I fear they have destroyed the records instead. My follow up with them to find out the status of the request has also been ignored."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Wisconsin Department of Transportation, State Patrol Office (DOT). 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 DOT to make them aware of your concerns.

While DOJ is unable to offer legal advice or counsel in this instance, 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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
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June 15, 2023

Josh Schram
joshpaulschram@gmail.com

Dear Josh Schram:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 12, 2023, in which you wrote, "I would like to request mandamus action on [] my behalf in regards to an open records request sent to UW-Stout

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the University of Wisconsin – Stout (UW-Stout). 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 contacted UW-Stout and made them aware of your concerns. I am also copying them on this letter.

While DOJ is unable offer legal advice or counsel in this instance, 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.

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Sincerely,

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

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: University of Wisconsin System – Office of General Counsel



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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June 27, 2023

Russell Gelormini

[REDACTED]
Boerne, TX 78015

Dear Russell Gelormini:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 16, 2023, in which you wrote, "I find the FOIA response from the WI DSPS inadequate and offensive. It is not an appropriate response. Please read and I believe you will agree. I am submitting a new and updated FOIA request that needs to be dealt with appropriately(attached) entitled FOIA submission, dated June 16[,] 2023. This supersedes all other requests as new information has come to light as recently as 1 hour ago." You requested DOJ "direct the DSPS to provide an adequate and appropriate response to [your] new FOIA request."

In your correspondence you asked DOJ to "[p]lease read" the Wisconsin Department of Safety and Professional Services (DSPS) response to your request, however, DSPS's response was not included in your correspondence, therefore, DOJ was unable to review it.

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."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DSPS. 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 DSPS to make them aware of your concerns, and I am also copying them on this letter.

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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

cc: Wisconsin Department of Safety and Professional Services



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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Jad M. Itani
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608/266-1221
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FAX 608/267-2779

June 29, 2023

John Jackson
jjacks1961@gmail.com

Dear John Jackson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 4, 2021, regarding two public records requests you submitted to the Calumet County Sheriff's Office for audio files regarding the Steven Avery case. Regarding "Request 1," you wrote, "While they didn't deny my request, they said they needed a Windows 98 PC to play these audio files." Regarding "Request 2" for "5 calls," you wrote that you received "the same as the prior reply." You requested DOJ "[s]end a Compute Tech to CASO [to] complete this FOIA Request" or "[r]equest that these CD's be sent to the DOJ to make the copies to fulfill my Open Records Request."

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. The records custodian must perform the balancing test analysis on a case-by-case basis. *Id.* ¶ 62. 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).

In your correspondence you wrote, “I didn’t ask them to play the calls, just make me a copy.” Prior to release, an authority must review requested records to determine if all, or part, of the records is prohibited from disclosure as explained in the previous paragraph. Therefore, an authority cannot simply release a copy of a requested record without first reviewing it. Doing so could potentially release records or information prohibited by law from disclosure.

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

Regarding your concerns that the Calumet County Sheriff’s Office “will destroy the CD’s,” records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. The public records law only addresses how long an authority must keep its records once an authority receives a public records request. A requester cannot seek relief under the public records law for alleged violations of record retention statutes when the non-retention or destruction predates submission of the public records request. *Cf.* Wis. Stat. § 19.35(5); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶¶ 13–15, 306 Wis. 2d 247, 742 N.W.2d 530.

In other words, although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See Gehl*, 306 Wis. 2d 247, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). When a requester submits a public records request, the authority is obligated to preserve the requested records until after the request is granted or until at least 60 days after the request is denied (or 90 days if the requester is a committed or incarcerated person). Other retention periods apply if an authority receives written notice that the requester has commenced a mandamus action to enforce the public records law.

Other than this, however, the public records law does not address how long an authority must keep its records, and the public records law cannot be used to address an authority’s alleged failure to retain records required to be kept under other laws. Instead, record retention is governed by other statutes. Wisconsin Stat. § 16.61 addresses the retention of records for state agencies, and Wis. Stat. § 19.21 deals with record retention for local government entities. The general statutory requirements for record retention apply equally to electronic records. Most often, records retention schedules, created in accordance with these statutes, govern how long an authority must keep its records and what it must do with them after the retention period ends. The Wisconsin Public Records Board (PRB)

provides guidance and information regarding electronic records management, which is available on the PRB's website at <https://publicrecordsboard.wi.gov/Pages/Resources/Guidance.aspx>.

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

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

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

The Attorney General and the 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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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www.doj.state.wi.us

Jad M. Itani
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June 29, 2023

Jessica McBride
jessica.wirightnow@gmail.com

Dear Jessica McBride:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 20, 2021, regarding your “complaint alleging a violation of the open records laws by the Milwaukee County District Attorney’s Office.” In response to your request for “two weeks of District Attorney’s sign-in sheets for three units,” Deputy District Attorney Bruce Landgraf wrote “he would be redacting the names of all people not charged” and “it would take an estimated 90 days of redaction time . . . to provide these redacted sheets.” You “do not believe that the law requires redaction” and “withholding the information to be a violation of the state’s open records laws and the public’s right to know.” You requested “the Attorney General require the Milwaukee County District Attorney’s office to release these records unredacted forthwith.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Milwaukee County District Attorney (DA). 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 the DA’s office and made them aware of your concerns.

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.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 29, 2023

Lacey Thacker
lacey1234dejaynes@gmail.com

Dear Lacey Thacker:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 2, 2022, in which you wrote that you were reporting “a violation of the freedom of information act regarding Calumet County Sheriff’s Department.” You “requested communications between certain entinties [sic] regarding a bloody blunt instrument uncovered in of [sic] their files that was never presented at trial for Steven Avery vs. State of Wisconsin in the homicide of Teresa Halbach.” You state you have not received a response to your request.

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. The records custodian must perform the balancing test analysis on a case-by-case basis. *Id.* ¶ 62. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. See Wis. Stat. § 19.36(6).

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

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

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

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

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

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish extending to the right.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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June 30, 2023

Phil Brinkman
Wisconsin State Journal
PBrinkman@madison.com

Dear Phil Brinkman:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 24, 2021, regarding “the Madison Metropolitan School District’s denial of an open records request by the Wisconsin State Journal.” You wrote that your request was denied based on “attorney client privilege” and “an exemption under the Family Educational Rights and Privacy Act.” You wrote, “The newspaper contends there are no grounds for withholding this report on the basis of the reasons cited” and requested “an attorney general opinion on whether a work product such as this, which points to shortcomings in a school district’s policies and make specific recommendations for changes, are exempt from disclosure under the records law.”

The Attorney General and DOJ’s Office of Open Government (OOG) appreciate your concern and your request for an opinion. Wisconsin law provides that the Attorney General must, when asked, provide the legislature and designated Wisconsin state government officials with an opinion on legal questions. Wis. Stat. § 165.015. The Attorney General may also provide formal legal opinions to district attorneys and county corporation counsel under certain circumstances. Wis. Stat. §§ 165.25(3) and 59.42(1)(c). The Attorney General cannot provide you with the opinion you requested because you do not meet these criteria.

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.

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Sincerely,

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

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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TTY 1-800-947-3529
FAX 608/266-2779

June 30, 2023

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 9, 2021, in which you enclosed a verified complaint you “sent to the Marinette County District Attorney [on behalf of your client] alleging multiple violations of the Open Meetings Law by the City of Marinette Common Council.” In your verified complaint you allege the Marinette Common Council is “going into closed sessions ostensibly to protect their competitive or bargaining positions, when in fact they are discussing questions that do not require secrecy” and “to receive legal advice about litigation or potential litigation, when in fact they are discussing other matters with their attorney not covered by the claimed exemption.” Your “client requests that the Attorney General review this complaint and bring a prosecution under Wis. Stat. 19.97.”

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).

I contacted the Marinette City Attorney and discussed this matter. The City Attorney confirmed that your client commenced an enforcement action two months after DOJ received your correspondence.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). The Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern.

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). In your September 9, 2021, correspondence, you enclosed a verified complaint you sent to the Marinette County District Attorney's office. Because your client commenced an action, which is ongoing, DOJ respectfully declines to pursue an enforcement action on your client's behalf at this time.

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 black ink, appearing to read 'Jad M. Itani', with a long horizontal flourish underneath.

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah