2023 3rd Quarter Correspondence

Index

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 5, 2023

Dimitry Kirsanov
dimitry.kirsanov@gmail.com

Dear Dimitry Kirsanov:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 4, 2022, in which you wrote, "I was involved in a motor vehicle accident and due to the "Federal Driver Privacy Protection Act," the other driver's information is redacted on the report, and I am unable to obtain it from my local police department to file with the at-fault insurance company. The police department indicates I would have to file with my insurance or retain an attorney to have that redacted information released." You asked, "Is there a method to obtain it myself without retaining an attorney or filing with my insurance?"

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

The federal Driver's Privacy Protection Act (DPPA) limits the release of certain information obtained from state motor vehicle records. Under the DPPA, "personal information" or "highly restricted personal information" obtained from DMV records may not be disclosed, except when permissible by state law (the "state law exception"), or when permissible "[f]or use by any government agency, including any court or law enforcement agency, in carrying out its functions" (the "agency functions" exception), among other DPPA exceptions. 18 U.S.C. § 2721(b)(14) (the "state law" exception); 18 U.S.C. § 2721(b)(1) (the "agency functions" exception).

In *New Richmond News v. City of New Richmond*, the Wisconsin Court of Appeals ruled that the "state law exception" permits authorities to release traffic accident reports unredacted, because Wisconsin law specifically mandates that authorities provide the public with access to accident reports. *New Richmond News v. City of New Richmond*, 2016 WI App 43, ¶¶ 34–36, 370 Wis. 2d 75, 881 N.W.2d 339 (citing Wis. Stat. § 346.70(4)(f)). In contrast, the court also ruled that responding to public records requests was not an "agency function" for purposes of the DPPA, such that authorities may not release unredacted incident reports containing personal information unless a different DPPA exception applies. *Id.* ¶¶ 43–49.

Finally, the court ruled that information obtained from another source, but verified using state motor vehicle records, is not subject to the DPPA. *Id.* ¶ 51. Depending on the totality of circumstances related to a particular public records request, non-DPPA statutory, common law, or balancing test considerations may also warrant redaction of certain personal information pursuant to the usual public records law analysis.

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.

Although you asked whether there is a method to obtain these records without an attorney, an additional option is that you may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, 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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 6, 2023

Josh Braithwaite, #475603
Wisconsin Secure Program Facility
Post Office Box 1000
Boscobel, WI 53805-1000

Dear Josh Braithwaite:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 18, 2023, regarding your public records request to the Wisconsin Department of Corrections (DOC) Wisconsin Secure Program Facility to "review body camera video." You wrote, "40 minutes of the footage was redacted/missing from my review with no reason/where missing footage went." You wrote, "I rightfully appeal through the [D]epartment of [C]orrections and [D]epartment of Justice."

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 those matters outside the OOG's scope.

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

However, I did contact the DOC to make them aware of your concerns, and I am also copying them on this letter. Although we are unable to offer you assistance regarding your public records request, we can offer some general information about the public records law.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). However, 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).

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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah
cc: Wisconsin Department of Corrections

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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July 10, 2023

Christopher Steffe
Galanis, Pollack, Jacobs & Johnson, S.C.
csteffe@gpjlaw.com

Dear Christopher Steffe:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 14, 2021, in which you wrote, "My office represents Society Insurance, A Mutual Company, in the investigation and potential subrogation recovery of a fire . . . my office has made numerous open records requests to Sheboygan Falls Fire Department for copies of any/all reports and/ore other materials they possess concerning a response to this aforementioned fire event." You requested DOJ "exercise its duties under Section 19.37(1)(b) to bring an action for mandamus demanding that the Sheboygan Falls Fire Department release the requested fire report to my office."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

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

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by

which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

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

The public records law 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 client's 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 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 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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

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July 14, 2023

Dan Balaban
dan.balaban@mobility-payments.com

Dear Dan Balaban:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 27, 2022, regarding your public records request "to the Milwaukee County Transit System (MCTS) seeking records related to the procurement in 2021 by the agency's procurement arm, MTS of an account-based ticketing system." You received "the contract and some heavily redacted proposals, but have not received the bids." You would like to "appeal" MCTS's response to your request.

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

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

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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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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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July 14, 2023

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 3, 2022, in which you enclosed a verified open meetings law complaint filed against the Village of Belleville. Your client requested DOJ "investigate this complaint and issue charges under Wis. Stat. 19.97." In your complaint you allege the Village of Belleville "violated the Open Meetings Law by repeatedly going into closed session to discuss matters not permitted to be discussed in closed session."

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 village attorney and discussed this matter. The village attorney, and District Attorney Ozanne in his September 29, 2022, confirmed the Village of Belleville has taken proactive steps to make meetings properly noticed with more detail to include the statutory language and specific subject matter. However, we are still providing you information below that we hope you find helpful.

Wisconsin Stat. § 19.85 lists exemptions in which meetings may be convened in closed session. Any exemptions to open meetings are to be viewed with the presumption of openness in mind. Such exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993). The exemptions should be invoked sparingly and only where necessary to protect the public interest and when holding an open session would be incompatible with the conduct of governmental affairs. "Mere government inconvenience is . . . no bar to the requirements of the law." *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

Notice of a contemplated closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough

information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

Under the open meetings law, a closed session is authorized for "[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). Thus, the Wis. Stat. § 19.85(1)(e) exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds, because the exemption also authorizes a closed session for "conducting other specified public business." For example, the Attorney General has determined that the exemption authorized a school board to convene in closed session to develop negotiating strategies for collective bargaining. 66 Op. Att'y Gen. 93, 96-97 (1977).

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

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). In your August 3, 2022 correspondence, you enclosed a verified complaint you sent to the Dane County District Attorney's office. I spoke with the Village of Belleville Attorney who provided me with a copy of District Attorney Ozanne's letter to you dated September 29, 2022, refusing to take action at that time. If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

The 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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 14, 2023

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 4, 2022, in which you wrote, "My client would like to formally file the attached Verified Complaint under Wis. Stat. 19.97(1) with the Attorney General and request that he bring charges against the Beloit School District based on the allegations therein." Your complaint alleges that the School District of Beloit violated the open meetings law by: "(1) failing to provide notice of the times of meetings; (2) providing the wrong physical address for meetings; (3) failing to broadcast meetings live that had been noticed as being available to watch online or on television; and (4) engaging in both discussion and action not properly noticed on an agenda."

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 School District of Beloit and discussed this matter and expressed your concerns to them.

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

The open meetings law provides for the level of specificity required in agenda items for open meetings as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3).

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

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

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

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

The open meetings law requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2). Similarly, an "open session" is defined in Wis. Stat. § 19.82(3) as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times."

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in places that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 580-81, 494 N.W.2d 408 (1993). Absolute access is not, however, required. *Id.* In *Badke*, for instance, the Wisconsin Supreme Court concluded that a village board meeting that was held in a village hall capable of holding 55–75 people was reasonably accessible, although three members of the public were turned away due to overcrowding. *Id.* at 561, 563, 581. Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any

doubt as to whether a meeting facility—or remote meeting platform—is large or sufficient enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility or with a remote meeting platform with sufficient capacity.

The open meetings law also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty miles from the district which the school board served was not "reasonably accessible" within the meaning of the open meetings law. Miller Correspondence (May 25, 1977). The Attorney General advises that, in order to comply with the "reasonably accessible" requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so. I-29-91 (Oct. 17, 1991).

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

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

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

There are currently no provisions in the open meetings law that mandates a remote option, such as ZOOM, be made available for the public when the meeting is being held in person at a reasonably accessible location. However, governmental bodies are encouraged to retain practices adopted to promote transparency during the Covid-19 pandemic to the extent that those practices would increase accessibility after the pandemic ends. By maintaining a remote option for public access to meetings or posting recordings of meetings as soon as

practicable after meetings conclude, governmental bodies can advance the open meetings law's purpose of ensuring government openness and transparency. *See* DOJ's Covid-19 Open Meetings Advisory (https://www.doj.state.wi.us/sites/default/files/news-media/3_16_20_OOG%20Advisory_COVID-19_and_Open_Meetings.pdf).

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 clients' 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 clients' 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, which you provided DOJ a copy of. Wis. Stat. § 19.97(1). If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

The 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,

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 14, 2023

Glendan Rewoldt
glendanrewoldt@gmail.com

Dear Glendan Rewoldt:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 6, 2021, in which you wrote, "I would like assistance in the investigation and possible Departmental action primarily related to a[n] violation of Wisconsin Statute 19.356, Notice to records subject; right of action." You claimed the "elected Clerk of the Town of Sumner, Jefferson County Wisconsin violated sections 19.35(1)(a), 19.356(2)(a)1., 19.36(10)(b), and 19.365 WI stats." DOJ is also in receipt of your March 4, 2022, correspondence regarding your "outstanding Records Request[s] that either have been unacknowledged by the Sumner Town Clerk or have gone unfilled." In your March 4, 2022, letter, you stated you were transmitting your complaint to the DOJ because you "believe that the [DOJ] . . . can choose to take responsibility in [filing an action for a mandamus] []."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

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

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

Generally, personnel-related records, including disciplinary records, are subject to disclosure under the public records law. Wisconsin Stat. § 19.36(10) addresses the treatment of certain employee personnel records and provides that certain such records cannot be disclosed. However, like all exceptions to disclosure under the public records law, these must be construed narrowly.

Information related to a current investigation of possible employee criminal conduct or misconduct connected to employment prior to the disposition of the investigation is exempt from disclosure by the public records statutes. Wis. Stat. § 19.36(10)(b). An "investigation" reaches its final "disposition" when the public employer has completed the investigation, and acts to impose discipline. A post-investigation grievance filed pursuant to a collective bargaining agreement does not extend the "investigation" for purposes of the statute. *See Local 2489, AFSCME, AFL-CIO v. Rock Cty.*, 2004 WI App 210, ¶¶ 12, 15, 277 Wis. 2d 208, 689 N.W.2d 644; *Zellner v. Cedarburg Sch. Dist.* ("*Zellner I*"), 2007 WI 53, ¶¶ 33–38, 300 Wis. 2d 290, 731 N.W.2d 240. This exception codifies common law standards and continues the tradition of keeping records related to misconduct investigations closed while those investigations are ongoing but, providing public oversight over the investigations after they have concluded. *Kroeplin v. Wis. Dep't of Nat. Res.*, 2006 WI App 227, ¶ 31, 297 Wis. 2d 254, 725 N.W.2d 286; *see also Hagen v. Bd. of Regents of Univ. of Wis. Sys.*, 2018 WI App 43, ¶¶ 6–9, 383 Wis. 2d 567, 916 N.W.2d 198.

The Wisconsin Supreme Court previously recognized that, when a records custodian's decision to release records implicates the reputational or privacy interests of an individual, the records custodian must notify the subject of the intent to release, and allow a reasonable time for the subject of the record to appeal the records custodian's decision to circuit court. *Woznicki v. Erickson*, 202 Wis. 2d 178, 189-94, 549 N.W.2d 699 (1996), *superseded by statute*, Wis. Stat. §§ 19.356 and 19.36(10)-(12). Succeeding cases applied the *Woznicki* doctrine to all personnel records of public employees. *Klein v. Wis. Res. Ctr.*, 218 Wis. 2d 487, 496-97, 582 N.W.2d 44 (Ct. App. 1998); *Milwaukee Teachers' Educ. Ass'n v. Milwaukee Bd. of Sch. Dirs.*, 227 Wis. 2d 779, 596 N.W.2d 403 (1999).

Wisconsin Stat. § 19.356 codifies and clarifies pre-release notice requirements (sometimes still called the "*Woznicki* notice") for specific kinds of records, and the statute also codifies judicial review procedures. By enacting Wis. Stat. § 19.356, the legislature sought to limit the extent to which notice was required while recognizing an interest in the privacy and reputation of certain record subjects.

Under the public records law, the notice required by Wis. Stat. § 19.356(2)(a) is limited to three categories of records. Pertinent to your inquiry, notice is required prior to releasing records containing information relating to an "employee" created or kept by an authority and that are the result of an investigation into a disciplinary matter involving the "employee" or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employer. Wis. Stat. § 19.356(2)(a)1. After receiving notice that the authority intends to release records, a record subject may seek to challenge the authority's decision to release the records by initiating a circuit court action seeking an order to restrain the authority from providing access to the records pursuant to Wis. Stat. § 19.356(3)-(5).

The authority may not provide access to the records for a period of 12 days after the notice is sent. Wis. Stat. § 19.356(5). If an action is not timely filed with the court to restrain the release of the records pursuant to Wis. Stat. § 19.356(4), the records may be released on the thirteenth business day after the date the notice is sent. If an action is filed with the court, the records may not be released until judicial proceedings have concluded. For further information regarding notices, please see Wis. Stat. § 19.356, and also see pages 50-56 of the Public Records Law Compliance Guide available through DOJ's website (https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides).

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

The public records law "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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

In the "compilation of outstanding Records Request[s]" you stated you requested "[d]raft minutes . . . ." However, drafts are not records as defined in Wis. Stat. § 19.32(2). *See Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86, ¶ 71, 327 Wis. 2d 572, 786 N.W.2d 177; *Journal/Sentinel, Inc. v. Sch. Bd. of Sch. Dist. of Shorewood*, 186 Wis. 2d 443, 456, 521 N.W.2d 165 (Ct. App. 1994).

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, as you are aware, 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 case does not present a novel issue of law that coincides with matters of statewide concern, the DOJ respectfully declines to pursue an action for mandamus.

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

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law 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. § 19.98 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

JMI:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 14, 2023

Sherry Seaman
mechanicalserviceswi@live.com

Dear Sherry Seaman:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 7, 2021, in which wrote, "This is a formal complaint for a violation of SS19.81 by the Town of Omro." You provided that, "A resident requested an item to be put on the [November 15, 2021 board meeting] agenda due to a problem with the closed sessions the Town has been utilizing. While asking during public comment why this item wasn't on the agenda, [residents] were advised by Supervisor Mark Krings, and also by chairman Brian Noe, that they had discussed the problem prior to the meeting" and "agreed to an action regarding this problem." You wrote, "[District Attorney] Sparr had advised me to file any further complaints with the Winnebago County Sherrif's [sic] department, but these actions do not fall under the purview of the Sherrif [sic], which is why I am submitting them to you for investigation."

With your correspondence you provided an "Omro Herald article and a link to a video that was taken on November 15, 2021 during the meeting." Please note, the video link is to a private Facebook group, therefore, we were unable to view the video. However, we were able to review the article you provided. The Omro Herald article states that the board decided "to chang[e] the way [they] are doing closed session. [They] will do it at the end [of the meeting] and [] will adjourn from closed session." According to town officials, "there was insufficient, soundproofed space in the Town Hall's building to accommodate members of the public while keeping them from accessing restricted talks" during closed sessions. You allege "the Town of Omro violated the law by having a walking quorum and taking actions outside of a properly convened meeting" when it "agree[d] to change Town Policy regarding said issue."

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 and 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 your concerns that are outside the OOG's scope.

Further, the information provided in your correspondence is insufficient for DOJ to properly evaluate your matter. However, DOJ can provide you with some general information about the open meetings law and public records law that we hope you will find helpful.

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

A meeting occurs when a convening of members of a governmental body satisfies two requirements. *See State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). The first requirement under the so-called *Showers* test is that there must be a purpose to engage in governmental business (the purpose requirement). Second, the number of members present must be sufficient to determine the governmental body's course of action (the numbers requirement). A meeting does not include any social or chance gathering or conference that is not intended to avoid the requirements of the open meetings law.

The requirements of the open meetings law also extend to walking quorums. A "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. *See Showers*, 135 Wis. 2d at 92. The danger is that a walking quorum may produce a predetermined outcome and thus, render the publicly held meeting a mere formality. *See State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 685–88, 239 N.W.2d 313 (1976). Therefore, any attempt to avoid the appearance of a "meeting" through use of a walking quorum or other "elaborate arrangements" is subject to prosecution under the open meetings law. *Id.* at 687.

The essential feature of a walking quorum is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. A walking quorum, however, may be found when the members: 1) have effectively engaged in collective discussion or information gathering outside of the context of a properly noticed meeting; and 2) have agreed with each other to act in some uniform fashion.

For enforcement under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). Generally, the Attorney General may elect to prosecute complaints presenting novel issues of law that coincide with matters of statewide concern. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, we respectfully decline to file an enforcement action on your behalf at this time.

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). For further information, please see pages 31-32 of the Open Meetings Law Compliance Guide and

Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a template for a verified open meetings law complaint. If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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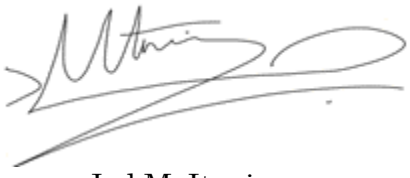
DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

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,



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July 14, 2023

Jeremy Vanderloop
Lakeside Legal
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Dear Jeremy Vanderloop:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence addressed to Waukesha County District Attorney Susan Opper and the Attorney General, dated September 24, 2021, regarding your request for enforcement of the open meetings law and public records law against the Town of Lisbon. You wrote, "The violations . . . stem from the actions of current Town of Lisbon Administrator Kathy Nickolaus vis a vis a proposed Farm Amusement Park project in the Town of Lisbon."

I contacted the village attorney and discussed this matter. I was informed that the underlying project related to your clients' concerns did not move forward. Nonetheless, we can offer you some information that you may find helpful regarding your concerns.

In your correspondence you wrote that after your first public records request was denied, your client "made another records request *pro* se" to the Town of Lisbon for "any and all com[m]unications . . . [regarding] the new farmland preservation district." The Town of Lisbon responded that your client "could come in and inspect e-mails and make copies," however, "[t]hat process produced only black and white copies and things like power point presentation . . . are not produced in that format." You requested "a mandamus enforcement action under Wis. Stat. § 19.37 requiring the Town of Lisbon to search all records relating to the project and provide them in appropriate native format."

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).

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"). The court of appeals has stated that the authority must provide "electronic copies," not paper copies of records, to a requester who asks for records in electronic format. *Lueders*, 2019 WI App 36, ¶ 15

There are 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). You stated in your September 24, 2021, correspondence that your letter was a request for enforcement. 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.

In your correspondence, you also wrote that the Plan Commission's agenda for its "July 1, 2021 [meeting did] not include the previously discussed Agri-Tourism district and as a result, your client and likely other residents interested in that subject, did not attend." At the meeting the Plan Commission direct[ed] the Town Planner and Town Attorney 'to draft preliminary documents for review and Public Hearing.'" You requested "an action under Wis. Stat. § 19.97(3) to declare the action taken July 1, 2021 to direct the Town Planner and Town Attorney to draft documents for the [Agri-Tourism district] be declared void."

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

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

The open meetings law provides for the level of specificity required in agenda items for open meetings as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

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

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

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

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. In your correspondence, you stated your letter was a request for enforcement.

However, 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).

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

Jad M. Itani
Assistant Attorney General
Office of Open Government

JMI:lah

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DEPARTMENT OF JUSTICE

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September 15, 2023

Tina Beelel
beeleltina@gmail.com

Dear Tina Beelel:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 28, 2023, in which you wrote, "How is it legal to get public information (of which is free) only from local journalist you would have to subscribe and pay for the information to get from the county of Washburn? . . . I cannot get any information of my son's incarceration."

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). You may wish to use the public records law to obtain information regarding your son by submitting a public records request to the appropriate authority. We are providing you with information on how to submit a public records request that you may find helpful.

When submitting a public records request, a requester should take care to ask for records containing the information they seek, as opposed to simply asking a question or asking for information. This is important because the public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, an authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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

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").

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). 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.

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. For more information on the public records law, 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.

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 22, 2023

Paul Freitag
mloans@hotmail.com

Dear Paul Freitag:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 5, 2023, in which you asked, "How can I obtain a police report?"

DOJ construed your correspondence as seeking information about how to obtain a police report in general, and DOJ is providing you with general public records law information below. DOJ did not construe your correspondence as seeking records from DOJ. If DOJ misunderstood your correspondence, please contact DOJ's Office of Open Government at opengov@widoj.gov.

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

The Wisconsin public records law defines an authority as any of the following having custody of a record:

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

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

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

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Statutes, case law, and the public records law balancing test, which weighs the public interest in disclosure of a record against the public interest in nondisclosure, provide such exceptions. Exceptions to disclosure should be narrowly construed to effectuate the law's purpose of ensuring government openness and transparency.

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

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

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September 22, 2023

Brooke Konopacki
konopackib@gmail.com

Dear Brooke Konopacki:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 18, 2023, in which you wrote, "The Town [of Winchester] held a public hearing on updates to the 2016 Comprehensive Plan. There were some notable changes and the community was caught off guard as we thought this would require a public participation plan beyond the public hearing." You provided a link to the Wisconsin Department of Administration's (DOA) website and quoted from DOA's website, "At a minimum, the local government must go through the process outline in s. 66.1001(4) to adopt the updated plan or readopt the original plan if it still meets the community's needs." You wrote, "As I read the law I think they need to start back from the beginning and document a plan for public participation through the entire process and the draft document they presented should not be the starting point of discussions." You asked DOJ, "Can you advise if I am interpreting what I am reading accurately? How do I communicate any potential non-compliance with state law to the planning commission?"

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 primarily discussed a matter outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding the requirements of Wis. Stat. § 66.1001(4). We can, however, provide you with some general information about the open meetings law that we hope you will find helpful.

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

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

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

If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and maintains an Open Meetings Law Compliance Guide on its website.

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

The information provided in this letter is provided pursuant to Wis. Stat. § 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

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September 22 2023

Diane Schmahl
djschm4@att.net

Dear Diane Schmahl:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 9, 2022, in which you asked, "What are the Enforcement options and penalties under *Wisconsin Statute 65.90 (Municipal Budgets).*" You wrote, "I found compliance guides on the OOG website on the open meetings law but nothing addressing violations under 65.90."

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. Your correspondence pertains to a subject matter that is outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding Wis. State. § 65.90." However, we can offer you some information regarding the open meetings law that you may find helpful.

The open meetings law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held 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). Generally, the Attorney General may elect to prosecute complaints 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

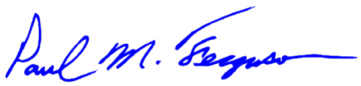
the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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.

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

The information provided in this letter is provided pursuant to Wis. Stat. § 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 26, 2023

Kevin Kearns
beachcaraudio@gmail.com

Dear Kevin Kearns:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 30, 2023, regarding your "public records request to the University of Wisconsin - Green Bay." You wrote, "I am concerned that the University of Wisconsin - Green Bay is violating the fee section of 19.35(3). I am seeking the Department of Justice's assistance in helping me to obtain the requested records without the $70.00 fee that appears to not be authorized by the statute."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the University of Wisconsin – Green Bay (UW-Green Bay). 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 University of Wisconsin System and discussed 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.

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

cc: University of Wisconsin System, Office of General Counsel

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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

September 26, 2023

Miles Maguire
miles.maguire@yahoo.com

Dear Miles Maguire:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 21, 2023, in which you wrote, "I am writing to request that an action for mandamus be brought against the University of Wisconsin Oshkosh to force compliance with the state public records law" regarding "several requests I have filed over the last year or so."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the University of Wisconsin – Oshkosh. 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 University of Wisconsin System and discussed 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.

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

cc: University of Wisconsin System, Office of General Counsel

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
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September 27, 2023

Christian Aguirre-Hodge, #558038
New Lisbon Correctional Institution
Post Office Box 2000
New Lisbon, WI 53950-2000

Dear Christian Aguirre-Hodge:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 17, 2023, regarding your "amended" public records request to the "New Lisbon Correctional Institution Records Department." Your "amended request was 'denied' and as a result [you] appealed." You "requested the records (phone calls) be preserved pending appeal and possible litigation." After your appeal was denied, you were notified "that the records (phone calls) no longer exist because [the Records Supervisor] does not have access to the 'old' system." You requested "the District Attorney act according to Wis. Stat. 19.37(10), without delay."

DOJ is also in receipt of your correspondence, dated August 23, 2023, regarding your request to the Brown County District Attorney for "records in the DA's possession concerning my case." Regarding your public records request to the New Lisbon Correctional Institution from your initial correspondence, you wrote, "How do I go about obtaining those records?" You provided that "those records were destroyed."

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) and the Brown County District Attorney. 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 DOC and the Brown County District Attorney to discuss your matter, and I am also copying both 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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: Brown County District Attorney's Office
Wisconsin Department of Corrections, Office of Legal Counsel

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 28, 2023

Alan Ferguson
alan@hsssoftware.com

Dear Alan Ferguson:

The Wisconsin Department of Justice (DOJ) is in receipt of a series of your correspondence, including correspondence dated June 16, 2023, in which you wrote, "I have made Open Records Requests of both Juneau County Housing Authority (JHCA) and the Wisconsin Department of Administration Division of Energy, Housing, and Community Resources (DEHCR). The information I have requested is regarding loans under the Community Development Block Grant (CDBG) program." You added, "The information both JCHA (David Lasker, Juneau County Corporation Counsel) and DOA (Nathan Judnic, Legal Counsel) have refused to provide are property owners and addresses of CDBG loans projects." You wrote that Juneau County Corporation Counsel "has cited §49.83 Wis. Stats. as the basis for the denial" and DOA "cites § 49.81." You asked DOJ for "intervention in the form of a mandamus action against both JCHA and DEHCR in order to force their compliance with Open Records law in Wisconsin." Please note, DOJ received multiple correspondence from you on this matter, all of which were reviewed.

DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent the Wisconsin Department of Administration (DOA). 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 DOA and the Juneau County Corporation Counsel to make them aware of your concerns, and I am also copying both on this letter.

In your June 23, 2023 correspondence, you expressed concerns about fees related to your request submitted to JCHA. It is my understanding that this issue has been resolved.

The Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website

(https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: Juneau County Corporation Counsel
Wisconsin Department of Administration, Division of Legal Services

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 29, 2023

Mark Berndt
berndt_mark@yahoo.com

Dear Mark Berndt:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 16, 2022, in which you wrote, "Mr. [Vander Leest] has refused to acknowledge my open records request . . . . My request for all of his written communications, including but not limited to text messages, emails, instant messages, Facebook posts and any written form of communication . . . ." You added, "Brown County and Mr. Schaefer have no ability to retrieve Mr. [Vander Leest's] other form of communication, therefore Mr. [Vander Leest] needs to respond to the open records request and has not." You wrote, "[T]oday I am registering a complaint to [Brown County District Attorney David Lasee] and then DOJ regarding the delay to my October 17, 2022 request."

DOJ is also in receipt of DA Lasee's email correspondence to you, dated December 16, 2022, noting that Clerk Vander Leest was initially "unaware of your request" because "the request had been made to his private email address." DA Lassee forwarded your request to Clerk Vander Leest's government email address. It is our hope that this matter has been resolved.

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

The 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. 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.

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

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
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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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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Assistant Attorney General
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FAX 608/267-2779

September 29, 2023

Rich Busalacchi
rabusalacchi@gmail.com

Dear Rich Busalacchi:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 15, 2022, regarding your public records request to "the village." You stated that the village provided some records in response to your request. You wrote, "What is not included in the information is why the employee is no longer employed and/or terminated and what led to the separation/termination of employment." You also wrote, "I asked for any records pertaining to . . . the separation/termination of the employee and was informed that it is protected by attorney client privilege. Additionally I was informed the employee is protected under Wis. Stat. 19.36(10)." You asked the following questions:

1. Does attorney client privilege exist if the Village legal counsel responds on behalf of the village and the records are not on village 'property/servers' but held with the villages legal counsel #5 above?
2. Does attorney client privilege exist if I (my name) am included in the complaint and/or I unknowingly provided information to defend the complaint on behalf of the village #5 above? I am not an employee of the Village.
3. The former employee was a director serving on the Village Managers Cabinet. Is this employee classified as an appointed public official under 19.32(1dm) and exempt from 19.36(10)(d)?
4. Is the former employee exempt from 19.36(10)(d) and is the village required to provide any discipline and misconduct records?
5. If no records exist other than held by attorney client privilege to identify exactly why the former employee is no longer employed by the village, does the village have an obligation to produce some documentation?
6. Does the village have an obligation to produce any records to show why the employee is no longer employed by the village?

Your correspondence did not include a copy of your public records request or the village's response. Your correspondence also did not name the village in question, so our office was unable to contact them and was unable to copy the village on this letter. Based on the

limited information provided in your correspondence, we are providing you with information in response to your questions 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).

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

Attorney-client privileged communications are not subject to disclosure under the public records law. *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-83, 546 N.W.2d 143 (1996); Wis. Stat. § 905.03(2). Therefore, an authority may deny a request if requested records fall within the attorney-client privilege. However, like all exceptions to disclosure, the attorney-client privilege should be narrowly construed to effectuate the law's purpose of ensuring government openness and transparency.

Generally, the attorney-client privilege does not apply to communications from the lawyer to the client, but an exception exists where the disclosure of the communication would directly or indirectly reveal the substance of the client's confidential communication to the client's lawyer. *Juneau Cty. Star-Times v. Juneau Cty.*, 2011 WI App 150, ¶ 36, 337 Wis. 2d 710, 807 N.W.2d 655 (citing *Wisconsin Newspress, Inc.,* 199 Wis. 2d at 783). Wisconsin Stat. § 905.03(1)(d) provides that "a communication is 'confidential' if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication."

The information you provided is insufficient to thoroughly evaluate whether the requested records constitute attorney-client privileged communications. However, it is highly unlikely that all records related to an employee's separation are attorney-client privileged communications and thus not subject to disclosure under the public records law.

Generally, personnel-related records, including disciplinary records, are subject to disclosure under the public records law. Wisconsin Stat. § 19.36(10) addresses the treatment

of certain employee personnel records and provides that certain such records cannot be disclosed. Again, like all exceptions to disclosure under the public records law, these must be construed narrowly.

Information related to a current investigation of possible employee criminal conduct or misconduct connected to employment prior to the disposition of the investigation is exempt from disclosure by the public records statutes. Wis. Stat. § 19.36(10)(b). An "investigation" reaches its final "disposition" when the public employer has completed the investigation, and acts to impose discipline. A post-investigation grievance filed pursuant to a collective bargaining agreement does not extend the "investigation" for purposes of the statute. *See Local 2489, AFSCME, AFL-CIO v. Rock Cty.*, 2004 WI App 210, ¶¶ 12, 15, 277 Wis. 2d 208, 689 N.W.2d 644; *Zellner v. Cedarburg Sch. Dist.* ("*Zellner I*"), 2007 WI 53, ¶¶ 33–38, 300 Wis. 2d 290, 731 N.W.2d 240. This exception codifies common law standards and continues the tradition of keeping records related to misconduct investigations closed while those investigations are ongoing but, providing public oversight over the investigations after they have concluded. *Kroeplin v. Wis. Dep't of Nat. Res.*, 2006 WI App 227, ¶ 31, 297 Wis. 2d 254, 725 N.W.2d 286; *see also Hagen v. Bd. of Regents of Univ. of Wis. Sys.*, 2018 WI App 43, ¶¶ 6–9, 383 Wis. 2d 567, 916 N.W.2d 198.

Wisconsin Stat. § 19.36(10)(d) states, in part, an authority shall not provide access to records containing information that an authority uses for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees. However, this provision does not apply to records of investigations into alleged employee misconduct, and does not create a blanket exemption for disciplinary and misconduct investigation records. *Kroeplin v. Wis. Dep't of Nat. Res.*, 2006 WI App 227, ¶¶ 20, 32, 297 Wis. 2d 254, 725 N.W.2d 286.

In your correspondence you stated, "The former employee was a director serving on the Village Managers Cabinet. You asked, "Is this employee classified as an appointed public official under 19.32(1dm) and exempt from 19.36(10)(d)?" The public records law defines "local public official" as "an individual holding a local public office." Wis. Stat. § 19.42(7x). "Local public office," in turn, has the meaning provided in Wis. Stat. § 19.42(7w), which includes many elective or appointive offices of local government units, and "also includes any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency, or division of the local governmental unit, but does not include any office or position filled by a municipal employee." Wis. Stat. § 19.32(1dm). A "local governmental unit" is a political subdivision, a special purpose district, an instrumentality or corporation of a political subdivision or special purpose district, a combination or subunit of any of these, or an instrumentality of the state and any of these. Wis. Stat. § 19.42(7u). DOJ has insufficient information to determine whether a "director serving on the Village Managers Cabinet" would be an "employee classified as an appointed public official" under Wis. Stat. § 19.32(1dm).

The public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an

action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority only in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue a mandamus action at this time.

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

Lawyer Referral and Information Service
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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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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FAX 608/267-2779

September 29, 2023

Barry Casetta
barryjayc@aim.com

Dear Barry Casetta:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 1, 2023, in which you wrote, "I[']m trying to do an open record request and a FOIR with the [F]ond du [L]ac [S]chool [D]istrict. The request is for specific emails of certain public school employees that were sent or received on their assigned school computers[.]" You continued, "The school superintendent Mr. Fleig says that they are not required to maintain past emails. The DPI says they have to. Is the district violating open records laws by denying my my [sic] FOIA requests?"

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

The public records law defines a "record" as any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. Wis. Stat. § 19.32(2). This definition encompasses electronic records and communications, including emails. Emails sent or received on an authority's computer system are records, as are emails conducting government business sent or received on personal email accounts by an authority's officers or employees.

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public

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

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f 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).

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. Although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). 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 (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 (an action to enforce the public records law).

Other than this, 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, records retention is governed by other statutes. Specifically, Wisconsin Stat. § 16.61 addresses the retention of records for state agencies, and Wisconsin Stat. § 19.21 deals with records retention for local government entities. The general statutory requirements for records 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's website, http://publicrecordsboard.wi.gov/, has additional information on record retention.

The Fond Du Lac School District is copied on this letter for their awareness, and I invite the school district to contact our office if they have records retention questions.

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:

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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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: Jeffrey Fleig, District Superintendent, Fond du Lac School District

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 29, 2023

Travis Curtis #187155
Wisconsin Secure Program Facility
Post Office Box 1000
Boscobel, WI 53805-1000

Dear Travis Curtis:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 9, 2023, in which you wrote, "I filed an open records request to the Secretary of State Sarah Godlewski on March 22, 2023. This was my third attempt at an open records request, the first two open records requests were for Secretary Douglas LaFollette, with no response. I also wrote Dane County District Attorney Ishmael R. Ozanee [to request enforcement] . . . [w]ith no response." You are "requesting" DOJ "to bring an action for Mandamus."

First, 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 contain specific references to you or your minor children, you may request them pursuant to the public records law.

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 Secretary of State. 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 Wisconsin Secretary of State's 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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: Wisconsin Secretary of State's Office

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Paul M. Ferguson
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608/266-1221
TTY 1-800-947-3529
FAX (608) 267-2779

September 29, 2023

Dave Lemke
davelemke@yahoo.com

Dear Dave Lemke:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 2, 2022, in which you wrote, "I voiced concern to the local government over a recent statute that was passed. . . . [You requested] to participate in the Board of Supervisor's 11:00 a.m. 2 November meeting . . . virtually." Your "request was accepted by the local government over the phone." You then received a call from the Treasurer and was informed your "request to participate in any matter was denied" and "only in person participation would be permitted at Cloverland Board of Supervisors' Meetings." You "requested the statute allowing the Board to deny participation to an American seeking to participate in their government. Said statute was not disclosed." You asked DOJ for "guidance and perspective as to the ethical nature in which my request was handled."

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

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

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in places that are reasonably calculated to be large enough to accommodate all citizens who

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

The open meetings law also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty miles from the district which the school board served was not "reasonably accessible" within the meaning of the open meetings law. Miller Correspondence (May 25, 1977). The Attorney General advises that, in order to comply with the "reasonably accessible" requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so. I-29-91 (Oct. 17, 1991).

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

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

The Attorney General's Office has advised that providing only remote access to an open meeting is not always permissible. For example, where a complex plan, drawing, or chart is needed for display or the demeanor of a witness is significant, a meeting held by telephone conference likely would not be "reasonably accessible" to the public because important aspects of the discussion or deliberation would not be communicated to the public. Furthermore, what is considered "reasonably accessible" in certain circumstances, such as during a pandemic, during which health officials encourage social distancing, may be different than in other circumstances. Ultimately, whether a meeting is "reasonably accessible" is a factual question that must be determined on a case-by-case basis.

There is no provision in the open meetings law requiring that a remote option be made available for the public when a meeting is held in-person at a reasonably accessible location.

DOJ encourages governmental bodies to retain practices adopted to promote transparency during the COVID-19 pandemic to the extent those practices increase accessibility. By maintaining a remote option for public access to meetings or posting recordings of meetings as soon as practicable after meetings conclude, governmental bodies can advance the open meetings law's purpose of ensuring governmental openness and transparency.

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

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

If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and maintains an Open Meetings Law Compliance Guide on its website.

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

The information provided in this letter is provided pursuant to Wis. Stat. § 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 29, 2023

Scott Pierquet
spierquet@hotmail.com

Dear Scott Pierquet:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 7, 2023, in which you wrote, "I filed an open records request with our school district. I believe they are improperly denying the request simply to protect elected officials votes from being known."

The Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The information you provided is insufficient to properly address your matter. If you would like to provide additional information, please contact DOJ's Office of Open Government at opengov@widoj.gov. However, DOJ can provide you with some general information about the public records law that you may find helpful.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." 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).

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

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

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

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

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and open meetings law and maintains a Public Records Law Compliance Guide and 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. § 19.39 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 29, 2023

Kristopher Sparks
kristopherts@gmail.com

Dear Kristopher Sparks:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 24, 2022, in which you wrote that you are a member of a condominium owners association that is "chartered in Wisconsin as a non-stock corp under the name Newport West Condominiums, inc." You asked, "Does the Wisconsin DOJ have enforcement mechanisms to encourage compliance with regulations regarding corporate governance? The current board of directors has refused since spring of this year to provide documents regarding our financial condition including: bank statements, meeting minutes and other financial reports. The requests I have sent to them by email have included references to the Wisconsin code mandating that that information be provided."

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. Your correspondence pertains to a subject matter that is outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding "non-stock corp[orations]" and "the Wisconsin code mandating that [financial information] be provided." 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).

The Wisconsin public records law defines an "authority" as any of the following having custody of a record:

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

> quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of "authority" is subject to the provisions of the public records law. DOJ has insufficient information to determine whether your condominium owners association is an authority. However, typically, a condominium owners association would not fit within this definition, and therefore, it would not be subject to the public records law.

If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 29, 2023

Stacey Weber
stacey.weber42@gmail.com

Dear Stacey Weber:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 6, 2022, in which you wrote, "Is this the correct office to report a violation of open meetings law? The Sparta Area School District recently voted on the annual mill rate. The president of the board was not in attendance." You continued, "When those who were present tied in their vote, the president was brought in via a poor cell connection. Despite not being present for any of the conversation or earlier votes, he cast a vote -- then made a motion for a higher mill rate, which was agreed upon by the rest of the board." You asked, "Is that legal?"

DOJ has insufficient information to evaluate whether the Sparta Area School District's vote on the annual mill rate complied with the requirements of the open meetings law. However, we can provide you with some general information regarding 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).

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

Regarding the purpose requirement, a body is engaged in governmental business when its members gather to simply hear information on a matter within the body's realm of authority. *See State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–74,

494 N.W.2d 408 (1993). Thus, mere attendance at an informational meeting on a matter within a body's realm of authority satisfies the purpose requirement. The members of the body need not discuss the matter or even interact. *Id.* at 574-76. This applies to a body that is only advisory and that has no power to make binding decisions. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

Regarding the numbers requirement, a quorum is the minimum number of a body's membership necessary to act. A majority of the members of a governmental body constitutes a quorum. Under simple majority rule, therefore, the open meetings law applies whenever one-half or more of the members of the governmental body gather to discuss or act on matters within the body's realm of authority. However, a negative quorum, the minimum number of a body's membership necessary to prevent action, also meets the numbers requirement. As a result, determining the number of members of a particular body necessary to meet the numbers requirement is fact specific and depends on the circumstances of the particular body.

Regarding in-person attendance at meetings, teleconferences or video conferences—including those held through the use of virtual or remote meeting platforms—are very similar to in-person conversations and thus qualify as a convening of members. 69 Op. Att'y Gen. 143 (1980); Madsen Correspondence (Jan. 27, 2023). Therefore, under the *Showers* test, the open meetings law applies to any conference call or video conference that: (1) is for the purpose of conducting governmental business; and (2) involves a sufficient number of members of the body to determine the body's course of action on the business under consideration. To comply with the law, a governmental body conducting a meeting by teleconference or video conference must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers (and video for video conferences) located at one or more sites open to the public or providing the public with an accessible link to attend the meeting remotely. 69 Op. Att'y Gen. 143, 145. When conducting a video conference, the governmental body should strongly consider providing the public with an alternative telephone dial-in option for observing such a meeting so that lack of internet is not a barrier to monitor the meeting.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). Generally, the Attorney General may elect to prosecute complaints presenting novel issues of law that coincide with matters of statewide concern. While you did not specifically request the Attorney General to file an enforcement action, nonetheless, we respectfully decline to file an enforcement action on your behalf.

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

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

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
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http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

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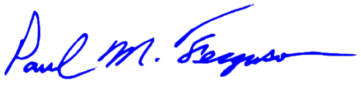
DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter is provided pursuant to Wis. Stat. § 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Paul M. Ferguson
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September 29, 2023

Amanda Hanson
gonzalezfamily0725@gmail.com

Dear Amanda Hanson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 18, 2022, in which you wrote, "I would like instructions on how to [file] a complaint against a public school district for violating the Freedom of Information Act/illegally withholding documents requested via an open records request made by myself. . . . We have now surpassed 45 days and I have received nothing."

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

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

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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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

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

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

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

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah