2023 4th Quarter Correspondence

Index

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 5, 2023

Dan Butkus
butkus_dan@yahoo.com

Dear Dan Butkus:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 29, 2023, in which you wrote, "I submitted an open records request of 3 Oneida County Supervisors, the County Board Chair, and the County Clerk. . . . for records pertaining to the appointment to fill a Board vacancy. It was limited to one day." You "received the records of two supervisors [and] was informed the records from the County Clerk and another supervisor were being prepared." You "have not heard from the County Board Supervisor. . . . it has been 9 days." You asked, "how long must I wait before I submit a complaint to the local DA or the Attorney General's office requesting remedy by 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).

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 Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority

and a requester. For example, if it becomes apparent to an authority that a public records request may require a longer response time, it may be prudent for the authority to send the requester a letter providing an update on the status of the response and, if possible, indicating when a response might be anticipated. Similarly, if an authority receives an inquiry from a requester seeking an update on the status of the request, it is advisable for the authority to respond to the requester with an update.

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:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
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(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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 5, 2023

Randin Divelbiss
randindivelbiss@gmail.com

Dear Randin Divelbiss:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 20, 2023, in which you wrote, "I was denied the public records request." You wrote, "this particular complaint is why Adams County clerk of courts did not release me a public record a DVD." You indicated that the DVD contained potentially exculpatory evidence related to an ongoing criminal case against you.

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 your alleged civil rights violations. We can, however, provide you with some general information about the public records law that we hope you will find helpful.

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

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 5, 2023

Good Citizen
babyrssmonster@gmail.com

Dear Good Citizen:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 27, 2023, in which you wrote, "Where can the public email or mail documents to get them a part of Wisconsin Public records? Since Wisconsin doesn't have a Recorder for public records. Register of Deeds returned my documents and wouldn't file them. They are Legal Notices and Statements of Common Law Trademarks I am trying to get recorded into public records. Any help you can provide I would be grateful [sic]."

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 your correspondence referenced "Public records," it primarily discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding matters outside the OOG's scope.

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

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December 5, 2023

Kelly Hannah
erkashllc@yahoo.com

Dear Kelly Hannah:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 10, 2023, in which you wrote, "Someone needs to speak with the chief of police in Horicon wi. Amy Yahnke. concerning release of PUBLIC records and costs associated with such. As of this moment we have a ever lengthening list of law violations, records denials or requests being ignored."

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 a matter outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding alleged "civil rights violations." We can, however, provide you with some general information about the public records law, and your rights in connection with the same, that we hope you will find helpful.

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

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

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

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

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

The public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 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.

Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs *of four specific tasks:* (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54, 341 Wis. 2d 607, 815 N.W.2d 367 (citation omitted) (emphasis in original). The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e).

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

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

The OOG also encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. It is also helpful in resolving issues such as those related to fees. If a requester is concerned about potential fees, it may be helpful that he or she express such concerns in the request.

I am copying the Horicon Police Department on this letter to make them aware of your concerns. I invite the Horicon Police Department to contact our office if they have any questions regarding the public records law.

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

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

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

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

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Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Horicon Police Department

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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December 5, 2023

Marshall Linde
mrshlllinde@gmail.com

Dear Marshall Linde:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 23, 2023, in which you wrote, "We belong to a lake association in northern part of the state that owns a water system and piers that are rented out. We pay annual dues. We have a volunteer board that oversees everything. We have encountered some questionable ways they operate. We have filed a records request for financial and minutes from the meetings. they have responded they don't have to respond because they are volunteers." You asked, "Don't they fall under Wisconsin statutes as far as open meeting and open records requests?"

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 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 applies to every meeting of a governmental body. A governmental body is defined as:

> [A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

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

DOJ has insufficient information to determine whether your lake association is subject to either law.,

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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December 19, 2023

Gary Kohlenberg
[redacted]
Oconomowoc, WI 53066

Dear Gary Kohlenberg:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 28, 2022, regarding your public records request to the City of West Bend. You wrote, "Please consider this [a] request to escalate the matter and compel the City of West Bend to comply with the [public] records request."

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

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

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

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

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). In your correspondence, you included correspondence from Washington County District Attorney Mark Bensen to you, in which District Attorney Bensen declined to bring a mandamus action on your behalf. 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
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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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

y

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DEPARTMENT OF JUSTICE

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December 20, 2023

Phil Anastasi
philanastasi72@gmail.com

Dear Phil Anastasi:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 1, 2022, in which you wrote, "I am forwarding an Open Records law violation to you that was filed with Green [L]ake County District Attorney . . . I realize the DA has 20 days to take action but . . . I am sending you a copy of the complaint along with documentation." In your correspondence to the district attorney, you wrote the Lake Puckaway Protection and Rehabilitation District (LPPRD) "had a commissioners meeting" and that topics were discussed that were "clearly not on the agenda posted properly for the August 20, 2022 meeting."

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the open meetings law, it also discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding the meeting "notification process under Chapter 33." 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).

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

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

Every public notice of a meeting must give the time, date, place, and subject matter of the meeting, including any contemplated closed sessions, 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. 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). Your Verified Complaint was also sent to the Green Lake County District Attorney. 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.) Be aware that there is a statutory time limit for bringing such an action: they must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

As of the date of your correspondence, 20 days had not passed from the filing of your verified complaint with the district attorney. In the time since your correspondence, it is possible that the district attorney responded. 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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 21, 2023

Anonymous
[redacted]
Delevan, WI 53115

Dear Anonymous:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, received January 10, 2023, regarding your concerns that your town board "is not following State Statutes regarding transparency of government as well as hiring for positions they do not have the authority to hire for." You wrote, "At their October 2022 meeting the Town Board went into closed session per WI 19.85(1)(c). During the closed session the board moved to hire a Deputy Treasurer." You wrote, "The October Agenda misled the public about the intent of the board going into closed session. . . . WI 19.85(1)(c) is intended for considering actions for current employees, not the consideration of adding new Officer positions and new employees." You asked "that these actions be looked into."

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the open meetings law, it also discussed a matter outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns regarding Wis. Stat. § 60.341, which describes the position of a township's deputy treasurer. We can, however, provide you with information about the open meetings law, and the exemptions that govern closed sessions of open meetings, 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).

The open meetings law applies to every meeting of a governmental body. The definition of a governmental body includes a "state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute,

ordinance, rule or order[.]" Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision-making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

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

Under the open meetings law, a closed session is authorized for "[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Wis. Stat. § 19.85(1)(c). The language of the exemption refers to a "public employee" rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies "from potential lawsuits resulting from open discussion of sensitive information." *Oshkosh Nw. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees. *See* 80 Op. Att'y Gen. 176, 177–78 (1992). *See also Buswell*, 2007 WI 71, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees").

Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general. 80 Op. Att'y Gen. 176, 178–82. The section authorizes closure to determine increases in compensation for specific employees. 67 Op. Att'y Gen. 117, 118. Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee's contract at the expiration of the contract term, but not to determine whether to reduce or increase staffing, in general. *See* 66 Op. Att'y Gen. 211, 213.

The Attorney General's Office has also concluded that the Wis. Stat. § 19.85(1)(c) exemption is sufficiently broad to authorize convening in closed session to interview and consider applicants for positions of employment. *See* Caturia Correspondence (Sept. 20, 1982).

DOJ has insufficient information to evaluate whether the Town Board properly applied the Wis. Stat. § 19.85(1)(c) exemption when going into closed session during the October 2022 board meeting. However, we hope that the information provided above was helpful.

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. 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:

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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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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December 21, 2023

Bruce Barron
barronbruce@outlook.com

Dear Bruce Barron:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 28, 2023, in which you wrote that you are "a little uncertain as to what constitutes a quorum for the circumstance below: City Council Committee with three members and one alternate. Circumstance - two members are absent. One member plus alternate are in attendance. Is 2 a voting quorum?"

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.

In the scenario you provided in your correspondence, if two members (one member and one alternate) is the minimum number of the body's membership necessary to act, there would be a quorum under the open meetings law. Because you did not provide information about the City Council committee's bylaws, DOJ is unable to assess and determine whether two of its members, including one alternate, is sufficient to meet the *Showers* test's numbers requirement.

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 21, 2023

Gerald Blanke
gmblanke@gmail.com

Dear Gerald Blanke:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 13, 2023, in which you wrote, "The town board is going to pass an ordinance against windmills in our township. They are going to ask for an ad [sic] advisory vote from the residents next week at the annual meeting, but, they are only let [sic] those in agreement to vote. At the monthly meeting last night they forced a board member to abstain from a vote. Is any of this O.K?"

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. 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).Your correspondence pertains to the procedural conduct of a meeting, the specific details of which are outside the scope of the open meetings law and, therefore, outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns.

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.

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Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
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December 21, 2023

Nancy Emons
emons@att.net

Dear Nancy Emons:

The Wisconsin Department of Justice (DOJ) is in receipt of your inquiries dated April 11, 2022 and April 22, 2022. We will first address your April 11, 2022 correspondence, regarding your public records "request for the Inspectors Statement (EL-104) contemporaneously with the February 15, 2022 Spring Primary Election." You wrote, "I have not received the record" and "I am filing this complaint against the Town of Sumner Clerk, Jefferson County, who is the record holder for the documents requested. I am filing this first with your Office, because the Jefferson County District Attorney has not responded to previous requests and suggested last time that an individual must file their own writ with the County Court to obtain the records."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The 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 provided a copy of correspondence from the Sumner Town Clerk to you, dated April 15, 2022, in which the Town Clerk wrote, "We have received your various request for open records. . . . As the town clerk, I am processing requests in order of importance to the duties and responsibilities of a town clerk regarding our municipality and state statutes. Many requests will take a substantial amount of time." 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").

Because time has passed since you sent your correspondence, it is possible that the Town of Sumner has responded to your records request. The Sumner Town Clerk is copied on this correspondence, and we invite them to contact our office if they have outstanding concerns or questions related to your request.

In addition, please note that 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, we nonetheless 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
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http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

As noted, DOJ is also in receipt of your April 21, 2022 correspondence, in which you asked "for guidance" regarding the "statutory meeting Notice requirements" for the Town of Sumner "Town Annual Meeting (s. 60.11 Wis. Stats. *Town Meeting*)." You asked, "1. Does or will the DOJ intervene in the situation described below? And 2. If the meeting is held without proper notice, will the actions of the meeting be voidable?" You provided the following update: "The Town Board was apprised that the meeting was not properly noticed by publishing, and posted an agenda (04/20/2022) for this Saturday (04/23/2022) to conduct the meeting. The Clerk provided (provable, un-factual) posting justifications for this meeting. Her 'posting' dates are retroactive to meet statutory requirements."

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 April 21,

2022 correspondence pertains to a subject matter and statute that are outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding "Section 60.11 Wis Stats." and "Class 2 [meeting] notice[s]."

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 open meetings law and maintains a Public Records Law Compliance Guide and 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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Sumner Town Clerk

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 21, 2023

Nancy Emons
emons@att.net

Dear Nancy Emons:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 15, 2023 and June 17, 2023, "inquir[ing] about the legality of a charge for redaction that is proposed for a record request [you] made of the Town Clerk of the Town of Sumner." You "requested electronic copies of the W2's and 1099s or 1099-misc. for employees and contractors paid in the year 2022." You wrote, "The Town Clerk responded that they contract out that work and the costs for redaction of 'social security numbers, home addresses, and bank account numbers' per a quote by their contractor would cost an advance payment of $410.00 for the records." You "made a second request for paper copies to be mailed first class from the retained Town office files." The Town Clerk replied, 'There is a charge for these records as we contract that service. . . . We are only charging the cost to us $410." You asked:

1. It is my interpretation and understanding the Town Clerk, representing the town, under Wis. Stats. Chapter 60 and Chapter 19 Subchapter II (Sec. 19.31, 19.32 Wis stats. or other applicable references) is clearly the ultimate and responsible recordholder for the documents requested in this matter.
2. Is this a correct interpretation that conforms to the cited state statutes?
3. Is it at all acceptable or legal that a Town or Town Clerk can contract record request responses- including redaction - to an outside party and exact this cost from the record requester?
4. Is it necessary a Contract be in place to consider that a contactor should fill the record request?
5. Would an "unreasonable" charge for "redaction costs" in any manner be considered nonresponsive or an attempt to deny.

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 partially pertains to town governance under ch. 60, Wis. Stats.,, 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 these portions of your correspondence. We can,

however, provide you with information about the fee structure allowed by 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). In this case, the Town of Sumner is the "authority" from which you requested "records."

The public records law does allow an authority to charge fees for certain costs incurred during the fulfillment of public records requests. Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs *of four specific tasks:* (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54, 341 Wis. 2d 607, 815 N.W.2d 367 (citation omitted) (emphasis in original).

The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e). An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring). Likewise, if an authority uses a contractor to assist in processing the authority's public records requests, the authority cannot pass along the contractor's redaction costs to the requester. The costs of redaction are not a permissible fee under the public records law, no matter if the fees are incurred by the authority itself or by the contractor.

The law permits an authority to impose a fee for locating records if the cost is $50.00 or more. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees if the total amount exceeds $5.00. Wis. Stat. § 19.35(3)(f). Generally, the rate for an actual, necessary, and direct charge for staff time should be based on the pay rate (including fringe benefits) of the lowest paid employee capable of performing the task.

An offer of compliance, but conditioned on unauthorized costs and terms, constitutes a denial. *WIREdata, Inc. v. Vill. of Sussex* ("*WIREdata I*"), 2007 WI App 22, ¶ 57, 298 Wis. 2d 743, 729 N.W.2d 757. For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law, which was issued on August 8, 2018, and can be found on DOJ's Website https://www.doj.state.wi.us/sites/default/files/news-media/8.8.18_OOG_Advisory_Fees_0.pdf.

There may be other laws outside of the public records law establishing fees for the records in question, potentially rendering those fees permissible under the public records

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

The OOG also encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. It is also helpful in resolving issues such as those related to fees. If a requester is concerned about potential fees, it may be helpful that he or she express such concerns in the request.

The Sumner town clerk is copied on this letter to make them aware of your concerns and alleviate any possible misunderstanding about what fees are permissible under the public records law. I invite them to contact our office should they wish to discuss your requests and concerns.

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 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 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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Sumner Town Clerk

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Lili Behm
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December 21, 2023

E Jacobose
ejguy58@yahoo.com

Dear E Jacobose:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 20, 2023, in which you wrote, "I submitted a records request to WI DHS on 10/19/2023 with no response. I would like to know the procedure for asking the Wisconsin Attorney General to file a mandamus action for those records."

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

While DOJ is unable offer legal advice or counsel in this instance, the Attorney General and the OOG are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 21, 2023

Kevin Mathewson
kenoshacountyeye@gmail.com

Dear Kevin Mathewson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 16, 2023, regarding a "possible open meeting violation tonight in Salem Lakes." You provided the "special board meeting agenda" which cited the Wis. Stat. § 19.85(1)(c) exemption for the closed session. You wrote, "My concern is the overly encompassing nature of the reason stated for a 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).

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.

A closed session is authorized for "[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the

governmental body has jurisdiction or exercises responsibility." Wis. Stat. § 19.85(1)(c). The language of the exemption refers to a "public employee" rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies "from potential lawsuits resulting from open discussion of sensitive information." *Oshkosh Nw. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees. *See* 80 Op. Att'y Gen. 176, 177–78 (1992). *See also Buswell*, 2007 WI 71, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees").

Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general. 80 Op. Att'y Gen. 176, 178–82. The section authorizes closure to determine increases in compensation for specific employees. 67 Op. Att'y Gen. 117, 118. Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee's contract at the expiration of the contract term, but not to determine whether to reduce or increase staffing, in general. *See* 66 Op. Att'y Gen. 211, 213.

Exemptions authorizing a governmental body to meet in closed session should be construed narrowly. Governmental officials must keep in mind that exemptions are 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.

With respect to the February 16. 2023, meeting notice at issue in your correspondence, based solely on the information you provided in your correspondence, a court could conclude that such a notice should contain additional information regarding what the board intends to discuss during the contemplated closed session. For example, while the agenda item cites a statutory exemption and mentions the Village Fire Department and the Village Clerk, it could more clearly identify what will specifically be discussed, such as a compensation adjustment or an employee's performance evaluation, as well as the specific employee or employees within the fire department. The Village of Salem Lakes is copied on this letter for its awareness, and I invite the village to contact our office to discuss the matter if they have any questions.

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. 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:

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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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Village of Salem Lakes

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 27, 2023

Carney Garcia
[redacted]
Shawano, WI 54166

Dear Carney Garcia:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 5, 2022, in which you wrote, "I sent a letter to Larenda Maulson, Corporate [sic] Counsel for Shawano County, regarding [alleged] open meeting violations relating to the monthly Planning, Development and Zoning Committee Meetings." You wrote, "[T]he March 2nd meeting agenda found on Shawano County's website . . . did not include a specific agenda item for our 'Lot 11' issue" so "no one from our neighborhood attended the meeting." You wrote, the "planning department and Corporate Counsel completely ignored my letter and once again discussed 'Lot 11' under a generic agenda item." You wrote, "I am requesting your assistance in this matter."

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

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). The Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. While you did not specifically request the Attorney General to file an enforcement action, we nonetheless respectfully decline to file an enforcement action on your behalf. However, we can provide additional information about the open meetings law's requirements, in the hope that you find this information helpful. Additionally, the Shawano County corporation counsel is copied on this letter and we invite them to contact our office with open meetings-related questions or concerns that arise in future.

The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body's chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a

written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

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

Every public notice of a meeting must give the time, date, place, and subject matter of the meeting, including any contemplated closed sessions, 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).

As mentioned above, the Attorney General has authority to enforce the open meetings law. More frequently, however, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Shawano County Corporation Counsel