2024 2nd Quarter Correspondence

Index

	Page
Public Records – balancing test, no records exist, denial reasons	3
Open Meetings – no requirement to record meetings or to provide a remote option, reasonable access to the public	6
Open Meetings – notice, closed session, meeting minutes	8
Open Meetings – notice, agenda, closed session requirements, meeting minutes	13
Public Records – student educational records, personnel-related records	17
Public Records – balancing test, denial reasons	20
Open Meetings – DOJ may be called upon to represent the University of Wisconsin Board of Regents	23
Public Records – balancing test, no records exist, denial reasons	25
Open Meetings – public comment period	28
Open Meetings – notice, quorums, pending case	30
Open Meetings – notice, walking quorum, pending case	32
Open Meetings – agenda, public comment period, notice	34
Public Records – balancing test, timeframe for response, denial reasons	40
Open Meetings – governmental body, notice	43
Open Meetings – deny request for Attorney General opinion, closed session requirements, Wis. Stat. § 19.85(1)(f) exemption	46
Open Meetings – alleged open meetings violations, pending case	50
Open Meetings – meeting requirements (purpose and numbers)	52
Open Meetings – alleged open meetings violations, pending case	55
Open Meetings – meeting requirements (purpose and numbers), walking quorum	57
Public Records – balancing test, timeframe, denial reasons, no records exist	60

Open Meetings – DOJ may be called upon to represent the Wisconsin Elections Commission 63

Open Meetings – agenda, motions and roll-call votes, notice 65

Public Records – DOJ may be called upon to represent the Wisconsin legislature 68

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 4, 2024

Matthew Kleinhans
Matthew.kleinhans@yahoo.com

Dear Matthew Kleinhans:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 14, 2023, in which you wrote, "'I'm looking to get information on how to have a denial of a[n] open records request reviewed. The police department stated I had to request a review from the DOJ."

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).

You provided the Lincoln County Sheriff's Office's response to your public records request. It its response, the Lincoln County Sheriff's Office stated that "[b]ody camera audio and/or video" and "[o]fficer report of the incident" records "do not exist and therefore cannot be provided." The public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI

56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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

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

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. 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
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(800) 362-9082
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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

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STATE OF WISCONSIN
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April 18, 2024

Stephen Braddish
stevebraddish@gmail.com

Dear Stephen Braddish:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 9, 2023, in which you wrote that the Spider Lake Township Board "plans to stop recording the audio and video of the Town Board meeting for just the legal update portion. For those of us who do not physically attend the meeting and get our information from the video and audio recordings published later online, this seems to be a violation of the open meeting law." You asked for DOJ's "view on whether what they are doing is in violation of the open meeting 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).

There is no requirement under the open meetings law for a governmental body to record their meetings in whole or in part. If a governmental body opts to record its meetings, the open meetings law does not require it to post these recordings, or a portion of them, on their website. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. The recordkeeping requirements under Wis. Stat. § 19.88(3) can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. *See* I-95-89 (Nov. 13, 1989).

The open meetings law requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2). This requirement means that governmental bodies must hold their meetings in places that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 580-81, 494 N.W.2d 408 (1993). Absolute access is not, however, required. *Id*. In *Badke*, for instance, the Wisconsin Supreme Court concluded

that a village board meeting that was held in a village hall capable of holding 55–75 people was reasonably accessible, although three members of the public were turned away due to overcrowding. *Id*. at 561, 563, 581. Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any doubt as to whether a meeting facility—or remote meeting platform—is large enough or sufficient enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility or with a remote meeting platform with sufficient capacity.

There are currently no provisions in the open meetings law requiring that a remote option (such as ZOOM) or a meeting recording be made available for the public when the meeting is being held in person at a reasonably accessible location. However, as stated in our office's guidance on compliance with the open meetings law following the Covid-19 pandemic, governmental bodies are encouraged to retain practices adopted to promote transparency during the pandemic to the extent that those practices would increase accessibility after the pandemic ends. By maintaining a remote option for public access to meetings or posting recordings of meetings as soon as practicable after meetings conclude, governmental bodies can advance the open meetings law's purpose of ensuring government openness and transparency. *See* Office of Open Government Advisory: Sunshine Week and the Continued Importance of Ensuring that Meetings are Reasonable Accessible During the COVID-19 Pandemic (March 5, 2021). Not recording one or more portions of an otherwise open meeting, such that those portions are not included in the online posting of the recording of the meeting, appears to run counter to this purpose.

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

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

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April 18, 2024

Michelle Gibbs
gibbs01@me.com

Dear Michelle Gibbs:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 13, 2023, regarding your concerns about "how meetings [and] special meetings are being held at the Town of Merton." You wrote, "They are putting in meetings where the vast majority of residents cannot attend during weekday day time [sic] hours. Emails do not appear to have been sent out to members that have requested such. The number of closed special meeting seems excessive. Meeting minutes do not sum up all that was discussed." You "question the validity of the closed meeting contents" and state that the public has "not been appropriately informed of many recent decisions."

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).

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The open meetings law does not, however, provide requirements about the time of day or day of the week that meetings should be held. The Office of Open Government recommends governmental bodies choose meeting dates and times that are reasonably convenient for the public to help advance the open meetings law's purpose of ensuring open and transparent government.

In your correspondence, you mention that the Town of Merton is apparently not sending emails to interested community members. While you did not specify the type of email to which you refer, the Office of Open Government presumes that you are referring to emails containing notice of the Town of Merton's meetings. The open meetings law does not require a governmental body to provide notice of its meetings via email. It does, however, require that public notice of all meetings of a governmental body must be given by communication

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

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

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

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

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

Your correspondence also notes concern about the way the Town of Merton convenes meetings in closed session. Generally, the open meetings law presumes that public meetings of governmental bodies should be held in open session. That said, 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).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present of the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

Notice of a contemplated closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

Furthermore, some specificity is required since many exemptions contain more than one reason for authorizing a closed session. For example, Wis. Stat. § 19.85(1)(c) provides an exemption for the following: "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Merely quoting the entire exemption, without specifying the portion of the exemption under which the body intends to enter into closed session, may not be sufficient. Only aspects of a matter that fall within a specific exemption may be discussed in a closed session. If aspects of a matter do not properly fall within an exemption, those aspects must be discussed in an open meeting.

In your correspondence, you mentioned a concern about how the Town of Merton's meeting minutes are kept. In an effort to increase transparency, DOJ recommends that governmental bodies keep minutes of all meetings. However, there is no requirement under the open meetings law for a governmental body to do so. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. *See* De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. The requirement can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. *See* I-95-89 (Nov. 13, 1989).

Thus, as long as the body creates and preserves a record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied, and the open meetings law does not require the body to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-

taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89 (Mar. 8, 1989). *See*, *e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and roll-call votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." *See* Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. *See* De Moya Correspondence (June 17, 2009).

The Town of Merton Clerk and Town Board Chairman are copied on this letter to make them aware of your concerns. I invite them to contact our office should they wish to discuss your request and concerns.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, 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 that a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Chairman, Town of Merton Town Board (via email: chairman@townofmerton.com)
Clerk, Town of Merton (via email: clerk@townofmerton.com)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 18, 2024

Andrew Handeland
drewscott1218@yahoo.com

Dear Andrew Handeland:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 30, 2023, in which you wrote, "We have an issue with our Village of Waterford Board and Administrator, Zeke Jackson, not following Open and Closed meeting rules and regulations. Not posting the agenda in proper time, not starting meeting in open session, (starting closed), not having closed sessions with the clerk there to record, not being specific in why the meetings are closed." You asked DOJ for help as you "fear" that they are "not following laws."

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

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

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

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

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).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present of the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

Notice of a contemplated closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

Furthermore, some specificity is required since many exemptions contain more than one reason for authorizing a closed session. For example, Wis. Stat. § 19.85(1)(c) provides an exemption for the following: "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Merely quoting the entire exemption, without specifying the portion of the exemption under which the body intends to enter into closed session, may not be sufficient. Only aspects of a matter that fall within a specific exemption may be discussed in a closed session. If aspects of a matter do not properly fall within an exemption, those aspects must be discussed in an open meeting.

In an effort to increase transparency, DOJ recommends that governmental bodies keep minutes of all meetings. However, there is no requirement under the open meetings law for a governmental body to do so. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. *See* De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. The requirement

can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. *See* I-95-89 (Nov. 13, 1989).

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

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and roll-call votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." *See* Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. *See* De Moya Correspondence (June 17, 2009).

DOJ lacks sufficient information to determine whether the Village of Waterford Board and Administrator have violated any provisions of the open meetings law, with respect to notice of closed sessions, recordkeeping for closed sessions, and timing of meeting notices or agenda releases. However, the open meetings law requires that meetings be first convened in open session. The Village of Waterford Administrator is copied on this letter to make them aware of your concerns. I invite them to contact our office should they wish to discuss your concerns or any questions about the open meetings law.

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

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

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

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

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Village of Waterford Administrator (via email: zjackson@waterfordwi.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 19, 2024

Patrick Bahr
bahr.patrick@wsalem.k12.wi.us

Dear Patrick Bahr:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 11, 2023, in which you wrote, "I am attempting to get clarification on communication to one [of] our school board members here at the School District of West Salem. . . . the board member feels they have a right to any record of the district, including student and employee following communication 'through Rep. Steve Doyle's office, whom after consulting with the State Attorney General's office.' Can you please provide me with some direction."

In your correspondence, you stated, "Our board member would have reached out sometime after April 2022, when he was elected." Please note that the DOJ Office of Open Government (OOG) does not have record of any contact from a West Salem School District board member. We are therefore unable to provide insight into any guidance or other communication that your school board colleague may have received.

The DOJ 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 – namely, the School District of West Salem's "board policy 8310 Public Records" – that is outside the scope of the OOG's responsibilities. As a result, we are unable to offer assistance or insight regarding your concerns with this school board policy. We can, however, provide you with information about the public records law as it relates to the disclosure of student-related records.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. A statute may provide such an exception. If a federal or state statute prohibits the release of a record in response to a public records request, an authority's records custodian cannot release the record. Wis. Stat. § 19.36(1). (The common law and the public records law balancing test, which weighs the

public interest in disclosure of a record against the public interest in nondisclosure, also provide other exceptions to disclosure.)

One such federal statute, the Federal Educational Records Privacy Act (FERPA), generally prohibits a federally funded educational institution from disclosing a student's personally identifiable information contained in a student's educational records without the written consent of the student's parents. *See* 20 U.S.C. §§ 1232g(b)(1) and 1232g(d). The Wisconsin pupil records statute, Wis. Stat. § 118.125(2), also generally requires confidentiality for "[a]ll pupil records," although the disclosure of certain information may be allowed if the school district has designated that information as "directory data" and other public notice requirements have been met. *See* Wis. Stat. §§ 118.125(1)(b) and (2)(j). Under Wis. Stat. § 118.125(1)(d), "[p]upil records" means "all records relating to individual pupils maintained by a school," subject to some exceptions.

Well-established public policy recognizing the confidentiality and privacy of student educational records and personally identifiable information contained in such records is expressed in FERPA and Wis. Stat. § 118.125. Moreover, well-established public policy recognizing the confidentiality and privacy of children and juveniles is also expressed in other statutes such as Wis. Stat. §§ 48.396 and 938.396. Thus, under the public records balancing test, the same public policy interest in protecting the confidentiality of pupil records evidenced by those statutes could weigh in favor of protecting the confidentiality of information obtained from those records.

The Wisconsin Supreme Court has concluded that the plain language of FERPA prohibits non-consensual disclosure of personally identifiable information contained within education records. *State ex rel. Osborn v. Bd. of Regents*, 2002 WI 83, ¶¶ 22–23, 254 Wis. 2d 266, 647 N.W.2d 158. In contrast, FERPA does *not* prohibit the disclosure of records where personally identifiable information is not included. *Id.* ¶¶ 23, 25, 31–32.

In order to determine whether the records contain personally identifiable information under FERPA, courts look to the regulations adopted to implement FERPA. *Osborn*, 254 Wis. 2d 266, ¶ 23. Based on the definitions set forth in those regulations, the Wisconsin Supreme Court has concluded that "only if the open records request seeks information that would make a student's identity traceable, may a custodian rely on FERPA to deny the request on the basis that it seeks personally identifiable information." *Osborn*, 254 Wis. 2d 266, ¶ 23. In certain instances, the public records law balancing test may also provide a basis for a complete or partial denial of access. *Id.* ¶¶ 32–40.

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

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

the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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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April 19, 2024

Nicole Strack
nicoleye2014@gmail.com

Dear Nicole Strack:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 30, 2023, regarding your public records request to the Two Rivers Police Department for "photos and video cameras from the scene" of your daughter's death. You wrote, "They are refusing to release any of that info to me. . . . Told me [t]o go to the attorney general[']s office."

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

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

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). Based on the information provided in your correspondence, it is unclear whether you submitted your

request in writing. If you have not already done so, we suggest you resubmit your request in writing. While requests do not have to be in writing, in order for the public records law's enforcement provisions to be available to a requester, the request must be submitted in writing. Wis. Stat. § 19.37(1). If your request was in writing, DOJ is unable to determine whether the Two Rivers Police Department provided a sufficient written statement of the reasons for its denial of your public records request.

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

However, the Two Rivers Police Department is copied on this letter to make them aware of your concerns, and they are invited to contact us should questions arise.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Two Rivers Police Department (via email: trpolice@two-rivers.org)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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FAX 608/267-2779

April 22, 2024

Tom Mathies
tmathies@gmail.com

Dear Tom Mathies:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 6, 2024, regarding your "complaint of [alleged] Open Meetings Law violations by the University of Wisconsin Board of Regents."

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

However, I did contact the University of Wisconsin Board of Regents to make them aware of your concerns, and I am also copying them on this letter.

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Quinn Williams, General Counsel, UW System Board of Regents

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
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June 6, 2024

Jeffrey Clemons
jeffreyclemons481@gmail.com

Dear Jeffrey Clemons:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 27, 2021, in which you wrote, "Ca[n] the DOJ or the AG help me obtain the recording" of "my 911 call" from Polk County Case No. 2019CM161. In further January 24, 2022, correspondence you wrote that you were "making a complaint" and asked "for help with Polk County Sheriff Department not letting [you] obtain 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).

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 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).

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.

However, I am copying the Polk County Sheriff's Department on this letter to make them aware of your concerns.

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Polk County Sheriff's Department, Records Division
(via email: rachel.wilson@polkcountywi.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 6, 2024

Paul Ehresmann
pehresma@gmail.com

Dear Paul Ehresmann:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 13, 2023, in which you wrote that the city of La Crosse has provided contradicting information regarding the city's conditional vacation of portions of land to developers. You wrote, "[W]e are merely looking for this vacation to be clarified so that a proper and transparent common council vote can take place."

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 referenced the open meetings law, stating, "[t]he Open Meetings concern is that the city has provided contradicting information about (1) what the scope of that vacation was, (2) what the conditions are that need to be satisfied by the developers in order for the vacation to be valid, and (3) what the process will be for that vacation to be finalized." The open meetings law requires that all meetings of all state and local governmental bodies be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law. The open meetings law does not govern the specific topics that a governmental body must discuss at a particular meeting.[1] As such, we are unable to offer you assistance or insight regarding the process by which the city of La Crosse conditionally vacated portions of both a street and a public green space to developers. We can, however, provide you with some 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).

[1] Please note that other statutes than the open meetings law may pertain to this issue, though OOG is not able to offer assistance with other potentially applicable statutes.

In your correspondence you wrote, "At the October 11th meeting," certain City of La Crosse representatives and personnel "told us that there would be no opportunity for … the public statements that the common council meeting allows." While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does *not* require a governmental body to allow members of the public to speak or actively participate in the body's meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak.

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

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

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

y

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 6, 2024

Anders Helquist
ahelquist@weldriley.com

Dear Anders Helquist:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 21, 2022, in which you enclosed "a Verified Complaint Under Wis. Stat. § 19.97(1) against certain commissioners of the Spooner Lake Protection and Rehabilitation District." The complaint alleges the Research Committee "met and continues to conduct" meetings "without providing proper notice . . . and has met at undisclosed locations on undisclosed dates." You also allege meetings held with a "negative quorum" and "walking quorums." The complaint requested "the District Attorney of Washburn County and/or the Attorney General of the State of Wisconsin investigate the [] allegations."

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

In your October 10, 2023 correspondence, received by DOJ regarding another matter, you included a Decision and Order denying Defendants' Motion to Dismiss in Washburn County Case Number 2023CV000006. This case appears to be the subject of your December 21, 2022 correspondence. As this case is still pending in the circuit court, we respectfully decline to file an enforcement action on your behalf at this time.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Lili Behm
Assistant Attorney General
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608/266-1221
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FAX (608) 267-2779

June 6, 2024

Anders Helquist
ahelquist@weldriley.com

Dear Anders Helquist:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 10, 2023, in which you enclosed "a Verified Complaint Under Wis. Stat. § 19.97(1) against the Waupaca Chain O'Lakes Advisory Committee and its seven (7) members." The complaint alleges the Committee and its members "impermissibly convened a series of unnoticed meetings, either through in-person meetings, electronic meetings (i.e., via e-mails, phone calls, or Zoom/MS Teams meetings), or had walking quorums." The complaint alleges that the "unnoticed meetings and walking quorums of the Committee have resulted in recommendations, decisions, and/or a resolution which led to the Lake District taking actions . . . to restrict and regulate use of watercraft on the Waupaca Chain O'Lakes." The complaint requested "the District Attorney of Waupaca County and/or the Attorney General of the State of Wisconsin investigate the [] allegations."

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).

It appears that two lawsuits have been filed regarding the issues raised in your correspondence. Because these lawsuits, Waupaca County Case Numbers 2023CV292 and 2023CV293, are still pending in the circuit court, DOJ respectfully declines to file an enforcement action on your behalf at this time.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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June 6, 2024

Mary McManus
marymargaretmcmanus14@gmail.com

Dear Mary McManus:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 14, 2024, in which you discussed several open meetings-related concerns and questions. In summing up your concerns, you wrote, "We question whether the City (of Eau Claire) may be in violation of the Wisconsin Open Meetings law, in relation to the *case-specific reasonableness of actions taken by the City Council members and City staff members*, and in relation to the practice of *Citizen Participation*." (Emphasis in original.) Your questions centered around the manner in which the City of Eau Claire deliberated on, provided information to the public about, and approved the Community for Outdoor Recreation, Biking, and Adventure (CORBA) trail system plan, and whether the City of Eau Claire complied fully with open meetings laws.

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). Accordingly, all meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

While portions of your correspondence pertained to the open meetings law and we are able to provide information and insight into those aspects of it, your letter also discussed matters outside the scope of the OOG's responsibilities. Namely, the concerns voiced in your correspondence appear, in large part, to relate to whether all topics or items of business which required public presentation or approval were, in fact, discussed before the public. Because the open meetings law does not speak to the specific topics that a governmental body must discuss at a particular meeting, we are unable to offer assistance or insight regarding the propriety of the City of Eau Claire's process with respect to the CORBA trail system plan. Please note that other statutes beyond the open meetings law may pertain to this issue, though OOG is not able to offer assistance with other potentially applicable statutes.

The materials provided with your correspondence discuss a number of meetings held in Eau Claire from January 2023 to January 2024. We have discussed these meetings with, and obtained meeting agendas and minutes from, the City; we reviewed those materials in addition to the documents you provided and linked to in your correspondence. The first relevant meeting, chronologically, was the January 25, 2023, meeting of the Waterways and Parks Commission. This meeting's agenda indicates that the CORBA plan for trails at the well site would be subject to "review and vote." Our review of the minutes from this meeting indicate that a quorum was not present, and as such no motions could be made or votes taken. Instead, the minutes indicate that a representative from CORBA gave a presentation of the well site trail plan.

We lack sufficient information to determine, at this time, whether January 25, 2023, was the first date on which the City informed the public of the planned CORBA trail system. However, based on the information we have reviewed, it does not appear that the City violated the open meetings law with respect to the notice and conduct of this Waterways and Parks Commission meeting. The open meetings law does not require "specific outreach" to the public on issues of potential concern beyond the notice required by Wis. Stat. § 19.84, and we have no information to suggest that the City failed to provide sufficient notice.

We understand from your correspondence that the Eau Claire City Council met on both February 13, 2023 (for a public hearing) and February 14, 2023 (for a legislative meeting). The agenda for the February 13 meeting does, as you note, indicate that a period for public comment was provided. The agenda states that public comment may address "ideas or concerns of citywide application" and, while it limits the matters that the City Council itself can address to those listed on the agenda, it does not limit the scope of potential public comment accordingly. As such, it seems that an interested member of the public would have been able to speak about the CORBA well site trail plan during the February 13 public comment period.

As your correspondence notes, the CORBA well site trail plan was discussed and approved by the City Council at the February 14, 2023, meeting. The meeting agenda appears to provide adequate notice of this item of business. You state that City Council members "spent about 23-24 minutes in conversation about this issue," and that some members expressed concern and asked questions. You also state that the resolution approving the construction of the CORBA well site trail system "was moved and approved unanimously" without further opportunity for the public to provide input and express concerns.

While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body's meetings. Though the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There may be other state statutes that require governmental bodies to hold public hearings on specified matters.[1] Unless such a statute specifically applies,

[1] City Council president Emily Berge seems to have alluded to this in her February 8, 2024, reply to Andrejs Lazda's email.

however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings.

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

Based on the information reviewed, the OOG is unable to conclude that the City's actions in noticing and conducting the February 13 and 14, 2023, meetings violated the open meetings law with respect to the extent and amount of public comment allowed on the issue of the CORBA well site trail plan before that plan was approved.

Your correspondence next discusses a March 8, 2023, meeting of the Airport Neighborhood Association. Your correspondence does not seem to suggest that the Association is subject to the open meetings law, and we lack sufficient information to determine whether it constitutes a governmental body to which the open meetings law would apply. As such, the OOG cannot conclude that any events at or omissions in this March 8, 2023, meeting violated the open meetings law.

Next in the chronology is the November 28, 2023, open house at the public library. As you note, the City had already agreed to move ahead with the CORBA trail plan by this time; you state that this open house did not feature "public opinion regarding whether the trails should be included in the well field." Because the open meetings law allows but does not require a governmental body to set aside a portion of a meeting for public comment, Wis. Stat. § 19.83(2), the conduct of the public library open house does not seem to violate the open meetings law.

Several days after this open house, on December 6, 2023, the Waterways and Parks Commission met. Your correspondence describes this meeting and indicates that it included spoken input from both supporters of and opponents to the CORBA well site trail plan. Your correspondence also states that the "motion to support the Agreement and advance it to City Council once again passed" at this December 6 meeting. You did not express concerns with the way in which the meeting was conducted, and you did not express explicit concerns with the way in which the meeting was noticed. However, your correspondence questions "how the Commission agenda is shared, and how many persons subscribe to the various opportunities to receive agendas, meeting minutes and announcements from the City via electronic means." You also question whether the City's "electronic communication process" has been "maximized across the community."

These questions implicate the open meetings law's notice requirements, at Wis. Stat. § 19.84. The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body's chief presiding officer

or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

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

The OOG lacks sufficient information to properly evaluate whether the City violated the notice requirements.

Before your chronology concludes with two January meetings of the City Council, you discuss various meetings of the Friends of the Wells and Airport Neighborhood Association groups. You do not appear to suggest that these groups are subject to the open meetings law, or that the City's conduct towards these groups' meetings violated the open meetings law. Your correspondence does suggest that the alleged public concerns about the CORBA well field trail plan grew before the City Council's next meetings. Those meetings occurred on January 22 and 23, 2024. The January 22 agenda indicates, as does your correspondence, that public discussion occurred about the CORBA plan; your correspondence also indicates that various members of the public spoke out about the CORBA plan during the public comment period of the January 22 meeting, which was also noticed in the agenda.[2] The OOG lacks information to suggest that the City violated the open meetings law with respect to the notice and conduct of the January 22 City Council meeting.

Finally, you discuss the January 23, 2024, City Council meeting. The agenda for this meeting contains the item, "Public discussion on proposed CORBA Trails Plan for the City Wells Site." Your correspondence states that members of the Friends of the Wells group attended this meeting, but that only City Council members had the opportunity to ask questions about the CORBA project. The meeting minutes indicate that the City Council considered a motion to postpone a vote to adopt a resolution approving the CORBA plan, but that motion failed, and the City Council instead voted to adopt the resolution. Your correspondence suggests that the City Council decided to move ahead with the CORBA plan despite its "lack of understanding . . . of the intensity of concerns held by residents and users of the well field." Because the open meetings law does not require public participation beyond ensuring that meetings are open to the public for citizen attendance and observation, the OOG is unable to conclude that the City violated the open meetings law with respect to the notice and conduct of its January 23 City Council meeting.

[2] The City confirmed that 17 individuals spoke during the January 22 public comment period.

Based on the information reviewed by our office, DOJ is not able to conclude the City violated any portion of the open meetings law in its consideration and approval of the planned CORBA trail system in the Eau Claire well field. However, I discussed your concerns with Eau Claire Assistant City Attorney Jenessa Stromberger, who is also copied on this letter. I invite Attorney Stromberger to contact me in the event that further questions arise.

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:

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Assistant City Attorney Jenessa Stromberger

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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June 12, 2024

Russell Albers
[redacted]
Madison, WI 53704

Dear Russell Albers:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 15, 2023, regarding your written public records request to the Madison Police Department. You wrote, "I didn't get any information back," and you considered this to be a denial of "the written request." You asked for DOJ's assistance in this matter.

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the public records law, it also discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your "request to reopen case numbers" and allegations of discrimination against you. 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. 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).

I am copying the Madison Police Department on this letter to make them aware of your concerns. I invite the Madison 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).

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Records Manager, Madison Police Department

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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June 12, 2024

Paul Grinde
[redacted]
Antigo, WI 54409

Dear Paul Grinde:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 25, 2024, regarding members of the Republican Party of Langlade County. You wrote, referencing members who sit on various local governmental bodies, "They are ignoring open meetings laws, open records requests, and conducting walking quorums."

Your correspondence also alleges violations of campaign finance laws, which have been separately addressed by DOJ's Division of Legal Services.

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 information you provided is insufficient to properly address your questions under the open meetings law. However, we can provide you with some general information about the open meetings law that you may find helpful.

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

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

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

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

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that "adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified." *Buswell*, 2007 WI 71, ¶ 37 n.7. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an

informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id. See also* Herbst Correspondence (July 16, 2008).

If you would like to learn more about the public records and open meetings laws, 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 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 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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June 12, 2024

Matthew McManus
[redacted]
Cedarburg, WI 53012

Dear Matthew McManus:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 23, 2023, in which you wrote, "I am requesting advice from you under Wis. Stat. [§] 19.98 as to the appropriateness of the Cedarburg School Board's action to meet in closed session during a special meeting on June 22, 2023." You specifically asked:

> Can a school board rely on Wis. Stat. [§] 19.85(1)(f) to adjourn a public meeting into a closed session when considering an investigation against a person where (1) all relevant information regarding that person's conduct giving rise to the investigation was already publicly disclosed by that person and it was a public record and (2) the only person who could be adversely affected by the discussion during the closed session was the person against whom the complaint was filed?

In your correspondence you wrote, "I believe this question qualifies as one of the rare instances when your opinion is warranted under the guidance." The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concern and your request for an opinion. Wisconsin law provides that the Attorney General must, when asked, provide the legislature and designated Wisconsin state government officials with an opinion on legal questions. Wis. Stat. § 165.015. The Attorney General may also provide formal legal opinions to district attorneys and county corporation counsel under certain circumstances. Wis. Stat. §§ 165.25(3) and 59.42(1)(c). The Attorney General cannot provide you with the opinion you requested because you do not meet these criteria.

While we cannot offer you the Attorney General opinion you requested, we can more briefly answer the question you posed in your correspondence. 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).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

Notice of a contemplated closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

The exemption in Wis. Stat. § 19.85(1)(f) authorizes a closed session for:

> Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

An example of this is where a state employee was alleged to have violated a state law. *See Wis. State Journal v. Univ. of Wis.-Platteville*, 160 Wis. 2d 31, 38, 465 N.W.2d 266 (Ct. App. 1990). This exemption is not limited to considerations involving public employees. For example, the Attorney General concluded that, in an exceptional case, a school board could convene in closed session under the exemption to interview a candidate to fill a vacancy on the school board if information is expected to damage a reputation, however, the vote should be in open session. 74 Op. Att'y Gen. 70, 72.

At the same time, the Attorney General cautioned that the exemption in Wis. Stat. § 19.85(1)(f) is extremely limited. It applies only where a member of a governmental body has actual knowledge of information that will have a substantial adverse effect on the person mentioned or involved. Moreover, the exemption authorizes closure only for the duration of

the discussions about the information specified in Wis. Stat. § 19.85(1)(f). Thus, the exemption would not authorize a school board to actually appoint a new member to the board in closed session. *Id.*

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.

Returning to the incident that is the subject of your question, while we lack sufficient information to thoroughly evaluate the issue, it seems that the exemption in Wis. Stat. § 19.85(1)(f) could apply. According to the scenario that you described in limited detail, the Cedarburg School Board did adjourn into closed session to consider "disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons." Id. Though we lack specific information, it is possible that, during the course of the closed session, "financial, medical, social or personal histories" of a specific person or persons were considered, as well. Id. You stated that the individual who is the subject of the investigation "could" be adversely affected by public discussion of the information giving rise to the investigation. If the Cedarburg School Board determined that such public discussion "would be likely to have a substantial adverse effect upon the reputation" of the investigation subject, then a court could determine that the closed session was proper. This is so even if, as you suggest, no other individuals faced a risk of "substantial adverse effect upon" their reputations.

In your correspondence, you allege that "all relevant information regarding that person's conduct giving rise to the investigation was already publicly disclosed by that person" before the Cedarburg School Board adjourned into closed session on June 22, 2023. It is still the case that additional relevant information may have remained non-public on that date. If so, the Cedarburg School Board could have been justified in applying the exemption in Wis. Stat. § 19.85(1)(f) if "financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons," if discussed in public, "would be likely to have a substantial adverse effect upon the reputation" of the person at issue or "any person referred to in such histories or data, or involved in such problems or investigations."

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, 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 at this time.

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

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

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

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

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

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

Josh Kaul
Attorney General

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FAX (608) 267-2779

June 27, 2024

Heather Grys-Luecht
grysluecht.heather@gmail.com

Dear Heather Grys-Luecht:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 2, 2022, in which you requested "assistance from the Office of Open Government and/or the Wisconsin Department of Justice related to concerns about Open Records Law violations and Open Meeting violations" regarding the Town of Grant Treasurer, Chair, and Clerk. You provided a letter detailing your concerns and the alleged violations.

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).

It appears that a lawsuit was filed on November 6, 2023 regarding your matter. Since Portage County Case Number 2023CV300 is still pending in the circuit court, we respectfully decline to pursue an enforcement action at this time. The Wisconsin Circuit Court Access service indicates that you are represented in this pending lawsuit by Attorney Thomas C. Kamenick. Attorney Kamenick is copied here for his information.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Attorney Thomas C. Kamenick (via email)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 27, 2024

Brock Friermood
brfrierm@mtu.edu

Dear Brock Friermood:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 30, 2024, in which you wrote, "I am looking for advice on an open meetings law violation. There was no public notice of a board gathering, however 4 out of the 5 town board members were at a private party at a local business, that was closed to the public. . . . Inquiring on what my steps would be to get this reported to my district attorney."

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). A meeting does not include any social or chance gathering or conference that is not intended to avoid the requirements of the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting." Wis. Stat. § 19.82(2). The members of the governmental body may overcome this presumption by proving that they did not discuss any subject that was within the realm of the body's authority. *See* Dieck Correspondence (Sept. 12, 2007).

If a court determines that four out of five members of a governmental body were present, the gathering is presumed to be a meeting. The board members would have an opportunity to rebut the presumption by proving that they did not discuss any matter within the town board's authority.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, 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). For further information, please see pages 38-39 of the Open Meetings Law Compliance Guide and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a template for a verified open meetings law complaint. If the district attorney refused or otherwise failed to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
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FAX (608) 267-2779

June 27, 2024

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 2, 2023, in which you enclosed "a verified complaint filed by [your] client with the Portage County District Attorney." You wrote, "Given the seriousness and lengthy history of blatant violations of the Open Meetings Law, my client requests that the Department of Justice's Office of Open Government investigate the complaint and bring charges against the Town of Grant and its officials."

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).

It appears that a lawsuit was filed on November 6, 2023 regarding your client's matter. Since Portage County Case Number 2023CV300 is still pending in the circuit court, we respectfully decline to investigate this matter or file an enforcement action at this time. We received a separate letter from your client, Heather Grys-Luecht, and we sent you a courtesy copy of our response to Ms. Grys-Luecht's correspondence.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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FAX 608/267-2779

June 27, 2024

Elisabeth Lambert
Wisconsin Education Law and Policy Hub
elisabeth@wisconsinelph.org

Dear Elisabeth Lambert:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence and exhibits, dated July 6, 2023, regarding your public records requests to the Hartland-Lakeside School District (District) "related to suspected violations of the Wisconsin Open Meetings Law, Wis. Stat[.] § 19.81 *et seq*., and of the ethics and official conduct laws that govern local officials, Wis[.] Stat[.] §§ 19.59 and 946.12." You requested DOJ "bring an action for mandamus seeking a court order for the District to release the requested records."

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 and public records laws, 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 Wis. Stat. §§ 19.59 and 946.12 and your request for DOJ to "investigate" alleged school board member misconduct. However, we have routed that portion of correspondence elsewhere within DOJ for review.

In your correspondence, you wrote, "My clients are concerned that school board members Tom Harter, John Harter, and Pfannerstill Jr. have repeatedly violated state open meetings law by communicating about and planning for school board actions outside of properly noticed meetings, with Pfannerstill Sr. and/or Dittrich potentially acting as intermediaries." Your above referenced public records requests to the District requested, in part, "written communications among the Harters and Pfannerstills."

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

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

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

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

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). 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 file an enforcement action on your behalf at this time.

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

Regarding your public records requests, 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).

DOJ was copied on email correspondence from the District's legal counsel, Jacob Curtis, to you regarding your public records requests. Mr. Curtis stated in his July 27, 2023 email, "It is my understanding that the public records requests represented by Exhibits B and C have been fulfilled by the District. The District is working to identify any remaining records responsive to the public records requests represented by Exhibits A and V as well as the April 18, 2023 Grevenkamp request that is not marked as an Exhibit." It is our hope that you have now received responses to all of your public records requests made to the District.

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. While we appreciate your concerns, nonetheless, your matter does not appear to present novel issues of law that coincide matters of statewide concern. As such, we respectfully decline to pursue an action for mandamus on your behalf at this time.

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

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

The information provided in this letter is provided pursuant to Wis. Stat. §§ 19.98 and 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

Josh Kaul
Attorney General

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Lili Behm
Assistant Attorney General
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608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

June 27, 2024

Matthew Pfeiffer
MJP2014JLP@gmail.com

Dear Matthew Pfeiffer:

The Wisconsin Department of Justice (DOJ) is in receipt of your phone calls on March 4 and 19, 2024 regarding your public records request to the Village of Ashwaubenon. You stated that the Village of Ashwaubenon "refuses to provide open records."

You did not provide details regarding your matter; therefore, we have insufficient information to evaluate it. However, DOJ's Office of Open Government is able to provide information about the Wisconsin Public Records Law and, importantly for your purposes, the remedies that are available for a dissatisfied requester to pursue.

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. 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.

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. Based on the limited information provided, 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
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Lili Behm
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June 27, 2024

Jay Stone
jayjoelstone@gmail.com

Dear Jay Stone:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 26, 2024, in which you included a verified open meetings law complaint against the commissioners of the Wisconsin Elections Commission.

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

However, I did contact the Wisconsin Elections Commission to make them aware of your concerns.

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 28, 2024

Sheena Cook-Fuglsang
scookfuglsang@gmail.com

Dear Sheena Cook-Fuglsang:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 17, 2024, in which you made "a formal open meetings violation complaint [against] the Desoto School District School board" arising out of a January 15, 2024 meeting. You described your concerns about several events that occurred at the 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 a matter outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding the Desoto School District School Board's process on whether or not to renew a contract or conduct an "administrator evaluation."

We construed your request to "expedite [this] matter" as a request for an enforcement action against the De Soto Area School District School Board. Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). 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 file an enforcement action on your behalf at this time. We can, however, provide you with information about the open meetings law, in the context of the January 15 meeting discussed in your correspondence, that we hope you will find helpful.

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

A 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. *State ex rel. Buswell v. Tomah Area Sch. Dist.,* 2007 WI 71, ¶ 34, 301 Wis. 2d 178, 732 N.W.2d 804. 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).

If an agenda item has been noticed for a specific time, the governmental body should make certain that the agenda item is discussed at that time, because citizens might have relied on the fact that a specific time was given. *Id.* But if an agenda item does not have a specific time listed, it is within the discretion of the governmental body to reorganize its agenda at the meeting. *Id.*

Nor is a governmental body required to actually discuss every item contained in the public notice. *See* Black Correspondence (Apr. 22, 2009). It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. *See* Krueger Correspondence (Feb. 13, 2019).

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. I-95-89 (Nov. 13, 1989). As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89 (Mar. 8, 1989); *see, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk), 60.33(2)(a) (town clerk), 61.25(3) (village clerk), 62.09(11)(b) (city clerk), 62.13(5)(i) (police and fire commission), 66.1001(4)(b) (plan commission), 70.47(7)(bb) (board of review).

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. De Moya Correspondence (June 17, 2009).

In your correspondence, you wrote, "Once [the school board] got into 'closed session', they informed the audience that they would be allowed into the room once closed session was over. During that time, [the audience was] informed by a staff member that they could leave because the board did not think there would be a resolution or action regarding closed session.

Audience chose to stay. Audience came out to seeing board members leaving. [The audience] approached the school board president, who consulted with staff and said they never went back into open session and no resolution was made or action items." A governmental body like the school board may not begin a meeting in open session, go into closed session, and subsequently reconvene the meeting in open session within 12 hours after completing the closed session, *unless* public notice of the subsequent open session was given on the meeting notice. Wis. Stat. § 19.85(2). In other words, if the school board went into closed session during the January 15 meeting with the expectation that it would then reconvene in open session, that is required to be on the meeting notice. If it was on the meeting notice, which the OOG has insufficient information to determine, the school board should have reconvened in open session at that time.

In your correspondence, you also wrote that "a staff member was sent an email to inform him that the board made an action item 1/15/2023 not to renew his contract. This was never shared to the audience of visitors." We have insufficient information at this time to determine whether an action was taken during the January 15 closed session and, if so, whether it was or was not properly noticed. As discussed earlier, the open meetings law requires a governmental body like the school board to keep a record of all motions and roll-call votes at its meetings, from both open and closed sessions. Wis. Stat. § 19.88(3), De Moya Correspondence (June 17, 2009). Many governmental bodies choose to comply with this requirement by keeping minutes of their meetings. Information about what actions, if any, were taken during the January 15 closed session might be found in the school board's minutes from that meeting.

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

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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June 28, 2024

Jillynn Niemeier
jillynnmortensen@gmail.com

Dear Jillynn Niemeier:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 12, 2023, regarding your public records request to Senator Howard Marklein. You asked how to "fil[e] a complaint about an open records request that [you] feel was not fulfilled." You wrote, "I got a response back from my request saying they did not have the information I was looking for."

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

However, I am also copying Senator Marklein's office on this letter to ensure that they are aware of your concerns.

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

cc: Senator Howard Marklein