

2024 3rd Quarter Correspondence

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**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

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P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

**Lili Behm
Assistant Attorney General**
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
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June 28, 2024

Jason Richison, #478813
Oshkosh Correctional Institution
Post Office Box 3530
Oshkosh, WI 54903-3530

Dear Jason Richison:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 5, 2021, regarding your request for a writ of mandamus for documents relating to “Police Officer Gerald L. Polzin[’s] Court Case # 2004CF691.”

Please note that as an individual who is currently incarcerated, your right to request records under the public records law is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See Wis. Stat. § 19.32(1c) and (3)*. Therefore, if the records you requested do not contain specific references to you or your minor children, you are not entitled to request the records you seek at this time.

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,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



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June 28, 2024

Cortez Robinson, # 376817
Racine Correctional Institution
Post Office Box 900
Racine, WI 53177

Dear Cortez Robinson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, received on March 18, 2024, in which you wrote, "I'm writing to ask that the records department here at R.C.I. be ordered to comply with state law and give the requester me . . . a copy of a[n] Incident report . . . it has been more than the five business [days] that it would take to give said report." You requested that DOJ "order Racine record department to promptly adhere to the open records request."

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

However, I did contact DOC to make them aware of your concerns.

Please note that, as an individual who is currently incarcerated, your right to request records under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See* Wis. Stat. §§ 19.32(1c) and (3). If the records you requested pertain to you or your minor children, you may request them pursuant to the public records law. However, under the public records law, certain information may still be redacted from the records.

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.

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Office of Open Government

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July 10, 2024

Patrick Schott
pschott@sbe-law.com

Dear Patrick Schott:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 24, 2022, in which you wrote, “Please consider this letter a verified complaint under Wis. Stat. § 19.87 on behalf of my clients . . . the Village of Waukesha continues to use closed sessions to conduct its business in secret. . . [and] fails to make or keep minutes of the actions it takes in the closed sessions.” Your clients “request that the State of Wisconsin bring an action to have a court find that the Village of Waukesha has violated the Open Meetings 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).

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.

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. Based on the materials you provided, it appears that a court could likely determine the Village of Waukesha provided sufficiently specific information about the subject matter to be considered in closed session and the corresponding exemptions (or portions thereof) authorizing each closed session.

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

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). Based solely on the materials you provided, and considering only the requirements imposed by the open meetings law, a court could conclude that the Village of Waukesha included sufficiently detailed records of motions and roll-call votes in its meeting minutes without additional information.

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).

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



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July 18, 2024

VIA EMAIL: gennytp@frontier.com

Ray Ten Pas

[REDACTED]
Oostburg, WI 53070

Dear Ray Ten Pas:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 18, 2024, regarding your “records request” to “Kory Rentmeester of WEC Energy Group asking for documents [you] feel are required before a Jurisdictional Offer can be served upon [you].” You wrote, “He has failed to respond back to me and produce the documents I requested.” You asked for “help in obtaining these 7 or more documents [you] requested from Mr. Rentmeester” and “[i]f Mr. Rentmeester refuses to produce these documents, can you get me these documents from the PSC of Wis. for me?”

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 the jurisdictional offer process and Wis. Stat. § 32.29.

Additionally, to the extent you have concerns regarding the Public Service Commission of Wisconsin (PSC), DOJ cannot offer you legal advice or counsel regarding your concerns as DOJ may be called upon to represent PSC. 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 copying the PSC on this letter to make them aware of your concerns.

The Attorney General and the OOG are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Public Service Commission of Wisconsin
(via email: PSCPPublicRecordsRequest@wisconsin.gov)



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 26, 2024

Carrie Harrison
carriemcdonough@hotmail.com

Dear Carrie Harrison:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 24, 2024, in which you requested “assistance in [your] public records request from the De Pere Police.” Specifically, you wrote that the De Pere Police Department and De Pere City Attorney’s Office “[asked] for payment of almost \$1000 prior to any work in [your] request would begin.” You asked that DOJ’s Office of Open Government (OOG) contact the De Pere Police Department to inquire about the fee it charged to respond to your public records request.

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

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

The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREDATA, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e). An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson,

C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).¹ Likewise, if an authority uses a contractor to assist in processing the authority's public records requests, the authority cannot pass along the contractor's redaction costs to the requester. The costs of redaction are not a permissible fee under the public records law, no matter if the fees are incurred by the authority itself or by the contractor.

The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). "Locating" a record means to find it by searching, examining, or experimenting. Subsequent review and redaction of the record are separate processes, not included in location of the record, for which a requester may not be charged. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶ 29 (Abrahamson, C.J., lead opinion). Only actual, necessary, and direct location costs are permitted. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f). Generally, the rate for an actual, necessary, and direct charge for staff time should be based on the pay rate (including fringe benefits) of the lowest paid employee capable of performing the task.

For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law, which was issued on August 8, 2018 and can be found on DOJ's website (<https://www.doj.state.wi.us/office-open-government/oog-advisories-and-attorney-general-opinions>).

Based on the information you provided in your correspondence, the De Pere Police Department and City Attorney proposed charging fees for copying, locating, reviewing, and redacting requested records. Fees in the amount of actual, necessary, and direct costs to reproduce and locate records are permitted, though location fees may only be imposed so long as those costs equal or exceed \$50.00. However, and depending on the circumstances of this matter, it is possible that a reviewing court could find that costs associated with subsequent review and redaction of records would *not* be permissible. As such, we discussed this matter in detail with Assistant City Attorney Eric Erdman to clarify the fees for which you could permissibly be charged pursuant to the public records law. It is our understanding that Attorney Erdman and/or the De Pere Police Department will contact you about any adjustments to the fees that may be necessary. Attorney Erdman is copied on this letter.

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

¹ One exception is that law enforcement agencies may impose fees for the cost of redacting recorded audio and video content in certain circumstances. See Wis. Stat. § 19.35(3)(h). This exception does not appear to apply to your request.

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

You may also wish to contact a private attorney regarding 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.

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Sincerely,



Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Attorney Eric Erdman (via email: eerdman@deperewi.gov)



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August 15, 2024

Christine Brennan
brennan1165@gmail.com

Dear Christine Brennan:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 13, 2024, in which you wrote, "I am hopeful you can help me obtain some records requests that I made which are now two months old. Typical records request [sic] by the state are filled - at times - anywhere from 6 months to 2 years . . . Please advise as to how I can actually submit and OBTAIN an open record request in a timely manner."

Further, you informed DOJ's Office of Open Government (OOG) that the public records requests referenced in your correspondence were submitted to the Wisconsin Department of Corrections (DOC).

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

However, I did contact the DOC to make them aware of your concerns, and I am also copying them on this letter. I understand that DOC responded to a records request you made in or around September 2022. That records request seems to be the subject of an earlier item of correspondence you sent to our office.

The Attorney General and DOJ's 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.

For your information, 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”).

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

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

Sincerely,

A handwritten signature in black ink that reads "Lili Behm". The signature is written in a cursive, slightly slanted style.

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Wisconsin Department of Corrections



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 26, 2024

Jennifer Allen
perseverancejo272965@gmail.com

Dear Jennifer Allen:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 27, 2023, in which you wrote, "I request your assistance in [an] action for writ of mandamus to receive full body cam footage and review of footage of officer use of excessive force."

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 the alleged "officer use of excessive force" and "civil rights violations." Additionally, the information in your correspondence was insufficient to evaluate your public records concerns. We can, however, provide you with some general information about the public records law that we hope you will find helpful.

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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FAX (608) 267-2779

September 26, 2024

E. Daniel Butkus
dan.butkus@yahoo.com

Dear E. Daniel Butkus:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 5, 2023, in which you wrote, "I am filing five (5) open meetings complaints against the Oneida County Planning and Development Committee (P&D) and Oneida County Corporation Counsel." Your complaints "deal[] with the [sic] whether the Committee has the authority to pass a motion to limit who may speak at the two public hearings during the latter part of the meeting" and "the public hearing notice."

DOJ cannot offer you legal advice or counsel concerning this issue as it relates to Oneida County Corporation Counsel (corporation counsel) as DOJ may be called upon to represent corporation counsel. 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.

Regarding your open meetings law complaints as they pertain to the Oneida County Planning and Development Committee (Committee), 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 Complaint #1 you wrote, "I claim that a County Committee is not a local governing body since it does not have the ability to pass laws or ordinances itself. Only a full County Board, which is the local governing body at the County level, has authority to set policy on public participation at County meetings." The open meetings law applies to every "meeting" of a "governmental body." Wis. Stat. § 19.83. An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law. The definition of a "governmental body" includes a "state or local agency, board, commission, council, department or public body corporate and politic created by constitution,

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

If a committee is a “formally constituted subunit” of the governmental body, then it is also subject to the open meetings law. A “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. *See* 74 Op. Att’y Gen. 38, 40 (1985). If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. *See* Dziki Correspondence (Dec. 12, 2006).

Groups that include both members and non-members of a parent body are not “subunits” of the parent body. Nonetheless, such groups frequently fit within the definition of a “governmental body”—*for example*, as advisory groups to the governmental bodies or government officials that created them.

In Complaints 2 and 3 you wrote, “The public hearings were posted . . . two weeks in advance of the public hearing with no limitation on public participation. By publishing a last minute agenda item late in the day on March 24 limiting the participation before the public hearing, the Committee rendered the public hearing notice obsolete.” In Complaints 4 & 5 you wrote, the Committee “passing a motion to modify who may be heard at the public hearing just moments before the public hearing is held, makes the Class II posting of the public hearing obsolete.” You provided the original notices for these meetings; however, DOJ has insufficient information regarding the alleged “last minute agenda item” or “passing a motion to modify” who may speak before the public hearing. Therefore, DOJ has insufficient information to properly evaluate your concerns.

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).

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.

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).

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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Attorney General

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September 26, 2024

Rachael Dowling
Winnebago County District 1 Supervisor
rachael.dowling@winnebagocountywi.gov

Dear Rachael Dowling:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 14, 2023, in which you wrote, “On June 28, 2023, I submitted a formal Open Records Request to my County Executive and Corporation Council. After much back-and-forth, we agreed to have the requested files delivered on August 4, 2023. Unfortunately, this date has come and passed - and I still am not in receipt of the documents I requested. Please advise.”

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Winnebago County Corporation Counsel (corporation counsel). 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 corporation counsel to make them aware of your concerns, and I am also copying them on this letter. It is also our understanding that responses to your requests were sent subsequent to your correspondence to DOJ. Therefore, it appears your issue was resolved.

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Lili Behm". The signature is written in a cursive, slightly slanted style.

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Winnebago County Corporation Counsel



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

Josh Kaul
Attorney General

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FAX (608) 267-2779

September 26, 2024

Margaret Foss
mlfoss2@gmail.com

Dear Margaret Foss:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 30, 2024, in which you asked, “Is it allowable for a Town Chairperson to recognize and allow a citizen to speak outside of the (noticed in the agenda) ‘Public Comment’ period, if the Chair chooses to do so?”

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).

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, but I cannot advise you on those statutes, as they fall outside of the Office of Open Government’s authority and responsibilities. Unless such a statute specifically applies, 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.

Based on the information provided in your correspondence, the context in which the citizen was invited to speak and allowed to speak is unclear. For that reason, DOJ lacks sufficient information to determine whether a violation of the open meetings law may have occurred.

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,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

17 W. Main Street
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www.doj.state.wi.us

**Lili Behm
Assistant Attorney General**
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

September 30, 2024

Donte Brown, #359355
Columbia Correctional Institution
Post Office Box 950
Portage, WI 53901-0950

Dear Donte Brown:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 11, 2023, in which you requested the Attorney General “bring an action for mandamus asking Milwaukee County Circuit Court Br. 38 to release the state’s discovery” and other documents for Milwaukee County Case No. 17CF1805.

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 OOG is not authorized to give you legal advice on matters that fall outside the scope of those statutes. You noted in your correspondence that you have “petitioned the court of appeals” and “requested Attorney Mathers on multiple occasions [provide your] client file . . . along with a complete copy of [the] state’s original discovery, to no avail.” Your concerns regard your attempts to obtain discovery materials as part of your criminal case, which appears to be ongoing in the court of appeals at this time. However, the OOG is unable to provide you with assistance regarding this, as it falls outside the scope of the OOG’s responsibilities and authority under Wis. Stat. § 19.39.

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Lili Behm". The signature is written in a cursive, slightly slanted style.

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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FAX 608/266-2779

September 30, 2024

Stephan Burton, #583293
Green Bay Correctional Institution
Post Office Box 19033
Green Bay, WI 54307

Dear Stephan Burton:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 10, 2024, in which you wrote, "I would like to know how can I obtain a copy of a building inspection on Green Bay Correctional Inst. in the last 10 years." You also asked, "If possible how can I obtain copies of the hearing being held about this issue."

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).

In order to obtain records from an authority, a person can submit a public records request specifying the records the person seeks. Requests do not have to be in writing and requesters generally do not have to identify themselves. Wis. Stat. §§ 19.35(1)(h), 19.35(1)(i). Requesters also do not need to state the purpose of requests. *Id.* "Magic words" are not required. A request which reasonably describes the subject matter and length of time involved is sufficient. Wis. Stat. § 19.35(1)(h).

However, please note that as an individual who is currently incarcerated, your right to request records under the public records law is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See* Wis. Stat. § 19.32(1c) and (3). If the records you requested pertain to you or your minor children, you may request them pursuant to the public records law. Based on the information provided in your correspondence, it appears that, under the public records law, you are not entitled to request the records you seek at this time.

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

Stephan Burton, #583293

Page 2

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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FAX 608/267-2779

September 30, 2024

Alicia Gralewicz
agrlewicz9@gmail.com

Dear Alicia Gralewicz:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 1, 2024, in which you wrote, “I’m curious if cold case 911 audio recording are archive, I tried checking police department and open records, Mayor and Fire department I have not been able to find the correct information.”

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

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

Other than this, however, the public records law does not address how long an authority must keep its records, and the public records law cannot be used to address an authority’s alleged failure to retain records required to be kept under other laws. Instead,

records retention is governed by other statutes. Wisconsin Stat. § 16.61 addresses the retention of records for state agencies, and Wis. Stat. § 19.21 deals with records retention for local government entities. The general statutory requirements for records retention apply equally to electronic records. Most often, records retention schedules, created in accordance with these statutes, govern how long an authority must keep its records and what it must do with them after the retention period ends.

The website for Wisconsin's Public Records Board (PRB) is a resource for information on records retention. The PRB's website is available at <https://publicrecordsboard.wi.gov>. You may also wish to consider submitting public records requests to the agencies at issue – for example, the appropriate police department, fire department, or mayor's office – seeking copies of their respective records retention schedules.

We hope you find this information helpful. The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and we are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources on DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide.

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

Sincerely,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Attorney General

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BehmL@doj.state.wi.us
608/266-1221
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FAX 608/267-2779

September 30, 2024

Nathan Harper
NathanHarper@Charter.net

Dear Nathan Harper:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 30, 2022, in which you wrote, “If a state agency accidentally destroys records before their stated retention period is completed, how should that agency document the destruction? Are there forms and are their [sic] penalties?”

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

Although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). When a requester submits a public records request, the authority is obligated to preserve the requested records until after the request is granted or until at least 60 days after the request is denied (90 days if the requester is a committed or incarcerated person). Other retention periods apply if an authority receives written notice that the requester has commenced a mandamus action (an action to enforce the public records law).

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

Board's website, <http://publicrecordsboard.wi.gov/>, has additional information on records retention.

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,

A handwritten signature in cursive script that reads "Lili Behm".

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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September 30, 2024

Wis
w48682445@gmail.com

Dear Wis:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 16, 2024, regarding your February 19, 2024 public records request to the Office of Governor Tony Evers (Governor's office). You wrote, "I received a partial response on March 29. I immediately sent a follow up because the response was incomplete. After ten business days from follow up, but 39 business days from the initial request, I have yet to receive a response. I have no choice but to assume this is a denial of my request and to seek a mandamus action from the attorney general."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Governor's office. 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 Governor's office 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 OOG are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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Sincerely,

A handwritten signature in black ink that reads "Lili Behm". The signature is written in a cursive, slightly slanted style.

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: The Office of Governor Tony Evers