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Mr. Bill Lueders
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Madison, WI 53706

Dear Mr. Lueders:

¶ 1. You have requested guidance on the application of Wis. Stat. § 19.356(9),[1] which requires notice to public officials before an authority permits access to certain records. I am providing this opinion pursuant to Wis. Stat. § 19.39, which permits the Attorney General to give advice as to the applicability of the Wisconsin public records law to "[a]ny person." I interpret your request as encompassing two questions: (1) whether Wis. Stat. § 19.356(9) requires advance notification and a five-day delay before releasing a record that mentions the name of a person holding state or local public office in any way; and (2) whether the notice and delay requirement of Wis. Stat. § 19.356(9) applies only to records that fall within the categories in Wis. Stat. § 19.356(2)(a).[2]

¶ 2. In my opinion, the answer to both questions is no. A record mentioning the name of a public official does not necessarily "relat[e] to" that public official within the meaning of Wis. Stat. § 19.356(9)(a). Wisconsin Stat. § 19.356(9)(a) is not confined, however, to the types of records enumerated in Wis. Stat. § 19.356(2)(a).

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[1]All citations in this letter are to Wisconsin Statutes 2011-12.

[2]As a general matter, this issue of notice and delay applies only after an authority applies the standard public records analysis and determines that it has responsive records that must be released. *See Wisconsin Public Records Law Wis. Stat. §§ 19.31-19.39 Compliance Outline*, DOJ, 42 (Sept. 2012), http://www.doj.state.wi.us/sites/default/files/dls/public-records-compliance-outline-2012.pdf.

¶ 3. The operative language of Wis. Stat. § 19.356(9)(a) provides:

> Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office or a state public office, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under par. (b).

Subsection (b) goes on to provide that, within five days of receipt of the notice sent by the authority, "a record subject may augment the record to be released with written comments and documentation selected by the record subject," and the authority must release the records "as augmented by the record subject." Wis. Stat. § 19.356(9)(b).[3]

¶ 4. You first ask whether Wis. Stat. § 19.356(9) applies to any record that mentions a person holding state or local public office.

¶ 5. I begin with the plain language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. Statutes must be read to have meaning, must be read in context, and their interpretation should not lead to absurd results. The Wisconsin Supreme Court has summarized the general framework for statutory interpretation as follows:

> We assume that the legislature's intent is expressed in the statutory language. . . .
>
> Thus . . . statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry. Statutory language is given its common, ordinary, and accepted meaning, except that technical or specifically-defined words or phrases are given their technical or special definitional meaning.

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[3]The five days are business days. Wis. Stat. § 19.356(9).

> Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage. If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.

Kalal, 271 Wis. 2d 633, ¶¶ 44-46 (citations and quotation marks omitted).

¶ 6. The general rule is that notice to a record subject is *not* required. Wisconsin Stat. § 19.356(1) establishes that "no authority is required to notify a record subject prior to providing to a requester access to a record containing information pertaining to that record subject," except as authorized in Wis. Stat. § 19.356.

¶ 7. Wisconsin Stat. § 19.356 provides two exceptions to the general rule. First, an authority must notify a record subject in three narrow circumstances provided by Wis. Stat. § 19.356(2). Second, Wis. Stat. § 19.356(9) provides that an authority must notify "a record subject who is an officer or employee of the authority holding a local public office or a state public office." Wis. Stat. § 19.356(9)(a).[4]

¶ 8. Both exceptions use the term "record subject," a term defined as "an individual about whom personally identifiable information is contained in a record." Wis. Stat. § 19.32(2g). "Personally identifiable information," in turn, is defined as "information that can be associated with a particular individual through one or more identifiers or other information or circumstances," *see* Wis. Stat. § 19.62(5) (incorporated into the public records law by Wis. Stat. § 19.32(1r)), and includes an individual's name.

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[4]"Local public office" and "state public office" are defined for public records law purposes in Wis. Stat. § 19.32(1dm) and (4), which refer, respectively, to Wis. Stat. § 19.42(7w) and (13). This letter refers to these individuals as "public officials" for shorthand.

¶ 9. The Wis. Stat. § 19.356(9)(a) exception does not apply, however, to any record merely mentioning the name of a record subject. Instead, it applies only to records "containing information relating to a record subject." Wis. Stat. § 19.356(9)(a). The mention of a public official's name, standing alone, does not bring a record within the ambit of the exception. Several provisions in Wis. Stat. § 19.356 compel this result.

¶ 10. First, Wis. Stat. § 19.356(1) provides that the exceptions in both Wis. Stat. § 19.356(2) and (9) apply only when a record "contain[s] information pertaining to that record subject." A record containing information pertaining to a public official must include more than a mention of his name. A prior attorney general opinion, construing that language in the course of interpreting Wis. Stat. § 19.356(2)(a), concluded that the word "pertain" requires more than a record containing personally identifiable information. Instead, a record would "pertain" to the person named in a subpoena or the person whose residence was the object of a search warrant, and the duty to notify would apply only to the release of such records. OAG-1-06 at 3 (Aug. 3, 2006). The opinion concluded: "[T]he mere fact that the record contains personally identifiable information about an individual, for example, the individual's name, does not mean that individual is entitled to be notified that the record is proposed to be released." OAG-1-06 at 3.

¶ 11. Like Wis. Stat. § 19.356(2)(a), Wis. Stat. § 19.356(9)(a) is subject to the limitation in Wis. Stat. § 19.356(1) providing that notice is required only for records "containing information pertaining to that record subject." "Statutes relating to the same subject matter are to be construed together and harmonized." *Wis. Bell, Inc. v. Pub. Serv. Comm'n*, 2004 WI App 223, ¶ 24, 277 Wis. 2d 729, 691 N.W.2d 697. The fact that the language in Wis. Stat. § 19.356(1) is common to Wis. Stat. § 19.356(2)(a) and (9)(a) counsels that they be read consistently. Wisconsin Stat. § 19.356(9)(a) thus also should be read as requiring notice only for records that relate or pertain to a public official in a substantive way.

¶ 12. Within Wis. Stat. § 19.356(9)(a) itself, the subsection is limited to records containing information "relating to" a record subject, language that echoes the "pertaining to" phrase in Wis. Stat. § 19.356(1). The Legislature could have, but did not, require notice regarding any record "containing personally identifiable information" about the public official. In addition, the provision applies only when the authority is the public official's employer or office, a limitation also suggesting that the record must do more than mention the official's name. While any authority

might have records mentioning the name of a public official, his employer or office is far more likely to have records that pertain directly to him.[5]

¶ 13. This reading is further confirmed by Wis. Stat. § 19.356(9)(b), which permits the public official to "augment the record to be released with written comments and documentation selected by the record subject." Wisconsin Stat. § 19.356(9)(b) makes sense only if the record to be released relates in a substantive way to the public official. If the record simply mentions his name, there is no information to augment.

¶ 14. If Wis. Stat. § 19.356(9) exception were read to require notice regarding any record that mentions a public official's name, the exception would almost swallow the rule. Although impossible to quantify, a large portion of records in the possession of authorities contain the name of a public official. For example, many state agencies include the name of their agency head on their letterhead and other documents. Requiring notice regarding any record bearing the public official's name would require the authority to notify him and afford five days to augment such records. This would be an absurd result.

¶ 15. "[L]egislative history is sometimes consulted to confirm or verify a plain-meaning interpretation." *Kalal*, 271 Wis. 2d 633, ¶ 51 (citation omitted). Wisconsin Stat. § 19.356(9) was created by 2003 Wis. Act 47. The Prefatory Note to Act 47 indicates that the law partially codifies *Woznicki v. Erickson*, 202 Wis. 2d 178, 193-94, 549 N.W.2d 699 (1996), and *Milwaukee Teachers' Educational Ass'n v. Milwaukee Board of School Directors*, 227 Wis. 2d 779, 596 N.W.2d 403 (1999), cases concerned with the effect of the release of records on the interests of persons identified in the records and their privacy and reputation. 2003 Wis. Act 47, Joint Legislative Council Prefatory Note. A record that mentions a public official in passing, or simply lists his or her name, normally does not implicate such concerns.

¶ 16. Regarding your second question, you ask whether Wis. Stat. § 19.356(9) is limited to the three circumstances spelled out in Wis. Stat. § 19.356(2)(a). Wisconsin Stat. § 19.356(2)(a) provides that any record subject, whether a public official or not, is entitled to notice when:

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[5]The Joint Legislative Council's Note to 2003 Wis. Act 47, § 4, the act creating Wis. Stat. § 19.356(9), describes the records covered by that section as ones "containing information relating to the employment of the record subject." 2003 Wis. Act 47, § 4, Joint Legislative Council Note.

1. A record containing information relating to an employee that is created or kept by the authority and that is the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.

2. A record obtained by the authority through a subpoena or search warrant.

3. A record prepared by an employer other than an authority, if that record contains information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information.

¶ 17. Wisconsin Stat. § 19.356(9) is plain on its face. The provision makes no reference back to the specific types of records described in Wis. Stat. § 19.356(2)(a). Because the statute does not include the limits under Wis. Stat. § 19.356(2)(a), those limits should not be imposed after the fact. *See generally State v. Deborah J.Z.*, 228 Wis. 2d 468, 475-76, 596 N.W.2d 490 (Ct. App. 1999) (the omission of a provision from a similar statute concerning a related subject is significant in showing that a different intention existed). This interpretation is supported by the previous attorney general opinion. *See* OAG-1-06 at 8 ("Subsection (9)(a), however, does not restrict the duty to notify to the class of records listed in subsection (2)(a)[.]").

¶ 18. I conclude that a record mentioning a public official does not necessarily relate to a record subject within the meaning of Wis. Stat. § 19.356(9). Wisconsin Stat. § 19.356(9) is not limited, however, to the specific categories of records enumerated in Wis. Stat. § 19.356(2)(a).

Sincerely,

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