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Wisconsin Stat. § 19.77 Annual Summary

MADISON, Wis. – The following is a summary of public records case law-related decisions for 2025, which the Wisconsin Department of Justice is required to compile pursuant to Wis. Stat. § 19.77.

The statute says that annually, the Attorney General shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The Attorney General shall provide the summary, at no charge, to interested persons.

I. CASE LAW

***Berrada Properties Management, Inc. v. Evers, et al.*, Dane County Case No. 2023CV1165 (April 2, 2025)**

This case addressed whether a response to a public records request was proper.

The circuit court provided an oral ruling in this case regarding Berrada Properties Management, Inc.'s (Berrada) public records request to the Governor's office for various records. The circuit court first addressed whether the Governor's office properly applied the attorney-client and work product privileges to documents responsive to the request. The circuit court provided directions to the Governor's office to "redact and produce" the documents which could not be claimed as privileged.

Next, the circuit court addressed whether the balancing test was properly applied when tenants' names were redacted from documents that were produced. The circuit court determined that sufficient reasoning was provided under the balancing test because "it is clear that this is a case of persons reporting personal details regarding

their living situation" and redaction of the names prevents "people from being retaliated against for complaining about their landlord."

The circuit court next addressed whether the Governor's office needed to produce electronic records in their native format. The circuit court stated that it had previously ordered electronic records that do not require redactions be produced in their native format. Regarding electronic records that require redactions, the circuit court stated that it cannot assume that the Governor's office cannot produce records in their native format with redactions. It stated that the Governor's office needs to produce the documents in native format with redactions or explain to the court why this is not possible.

The circuit court next addressed whether the Governor's office needed to provide Department of Workforce Development (DWD) spreadsheets. The Governor's office stated references to Berrada were "incidental" and would be "burdensome to review and redact" due to the highly personal information contained in the spreadsheets. The circuit court stated that it is not up to "governmental bodies to determine what records matter to requesters and which do not." It also stated that "it does not matter whether it would be burdensome to redact documents. It matters whether the redactions would render the remainder [sic] document meaningless." The circuit court ordered that the DWD spreadsheets be redacted and produced.

Lastly, the circuit court addressed Berrada's claim under Wis. Stat. § 19.35(4)(a) for an alleged delay by the Governor's office in responding to its request. The circuit court granted summary judgment to the Governor's office on this claim stating that "[s]uch delay does not, by itself, entitle Berrada to any relief." It also stated that *Capital Times Co. v. Doyle,* 2011 WI App 137, 337 Wis. 2d 544, 807 N.W.2d 666, "bars delay claims after an authority provides a response, regardless of the timeliness of that response."

Berrada filed an appeal and the Governor's office filed a cross appeal. As of the date of this publication, a stipulation to dismiss was filed on March 9, 2026 and an order dismissing the appeal was issued on March 10, 2026.

***Jackson v. Racine County District Attorney*, 2023AP324 (Wis Ct. App. June 10, 2025) (unpublished)**

This case addressed whether the Racine County District Attorney violated the public records law when it failed to maintain a requested prosecutorial file.

Terry Jackson (Jackson) made a public records request to the Racine County District Attorney's office (DA) for a copy of the prosecutorial file in his 1992 criminal case.

Initially, the DA stated that the file could not be located. Through his attorney, Jackson filed a petition for writ of mandamus asking the court to compel the DA to produce the file. The DA provided Jackson with records stating that "parts of the file were located and other parts were being reconstructed to the extent possible." Jackson then filed a petition for an alternative writ of mandamus which the court granted. After an in-person review of the file, Jackson's attorney filed a motion seeking attorney fees, costs, and damages. At the hearing, the DA stated that all available records had been produced except those deemed to be attorney work product. The circuit court determined that the DA "had a statutory duty to maintain Jackson's file and that she had a duty to 'provide a true and accurate copy of such a record on request to a member of the public' under the public records law." Jackson was awarded attorney fees, costs and damages. The DA appealed.

The court of appeals reversed the circuit court's decision. First, the court stated that Jackson did not satisfy the requirements for mandamus because under *State ex rel. Richards v. Foust,* 165 Wis. 2d 429, 477 N.W.2d 608, "Jackson has no clear legal right to the prosecutorial file relating to his conviction." Second, the court of appeals stated that the DA's failure to produce Jackson's entire file because it was not retained as required by a different statute is not a violation of the public records law. Therefore, Jackson was not entitled to attorney fees, costs, and damages. The court of appeals remanded the case to the circuit court to vacate the judgment.

***Lindell v. Hoy and Murphy*, Dane County Case No. 2025CV2236 (November 7, 2025)**

This case addressed whether a petition for writ of mandamus is moot.

Nate Lindell (Lindell) filed a petition for writ of mandamus asking the court to order the Department of Corrections to refund the $0.84 he was allegedly overcharged for records. In its motion to quash and dismiss, Respondents provided a sworn declaration that the $0.84 was refunded to Lindell's account. The circuit court granted Respondents' motion and dismissed Lindell's mandamus claim stating, "Lindell has already received the $0.84 refund he seeks; an order requiring Respondents to issue that refund would have no practical effect." The court also stated that because Lindell did not claim Respondents withheld or delayed access to records, damages cannot be sought under the public records law.

Lindell appealed the circuit court's decision, and the case is in briefing in the court of appeals.

***Midwest Environmental Advocates, Inc. v. Prehn*, 2025 WI App 55, 418 Wis. 2d 212, 26 N.W.3d 347**

This case addressed whether text messages were "records" and whether a judicially sanctioned change in the parties' legal relationship occurred.

Midwest Environmental Associates, Inc. (MEA) submitted a public records request to Frederick Prehn (Prehn) for communications, including text messages, regarding his tenure on the Natural Resources Board (NRB). The Department of Natural Resources (DNR) provided responsive records to MEA but did not include any text messages. After receiving a text message in response to a different request that included Prehn, MEA filed a complaint alleging that Prehn "arbitrarily and capriciously delayed and denied" MEA's public records request. Prehn filed a motion to dismiss, arguing that the text messages were not "records" under the public records law and that he is not an "authority." The circuit court denied Prehn's motion to dismiss and, subsequently, Prehn provided MEA with responsive text messages. Both parties then filed for summary judgment. The circuit court denied MEA's request, based on *Friends of Frame Park, U.A. v. City of Waukesha,* 2022 WI 57, 403 Wis. 2d 1, 976 N.W.2d 263, and granted summary judgment to Prehn, concluding that "although [Prehn] arbitrarily withheld public records for approximately [16] months, Prehn has mooted this action by providing those records before any judicially sanctioned change in the parties' relationship." MEA filed a post-judgment motion, arguing that "under *Wisconsin State Journal v. Blazel*, 2023 WI App 18, 407 Wis. 2d 472, 991 N.W.2d 450, the production of responsive records did not render MEA's action moot and extraordinary circumstances existed justifying relief from judgment." The circuit court denied this motion and MEA appealed.

The court of appeals affirmed the circuit court's order denying Prehn's motion to dismiss stating that text messages are records and that "although Prehn is not an 'authority' under the Public Records Law, he is a necessary party to this litigation under Wis. Stat. § 803.03(1)." The court of appeals reversed the circuit court's order denying MEA's post-judgment motion stating that under *Blazel*, 2023 WI App 18, MEA's lawsuit was not moot and that "extraordinary circumstances exist justifying relief from judgment." It also stated that MEA had "achieved a judicially sanctioned change in the parties' legal relationship."

Prehn petitioned the Wisconsin Supreme Court for review on August 27, 2025; the petition is pending.

***Sveom v. School District of Beloit*, Rock County Case No. 2023CV771 (January 22, 2025)**

This case addressed whether records were properly withheld.

MaryAnn Sveom (Sveom) submitted a public records request to the School District of Beloit (School District) for a list of email addresses the School District uses to send mass emails. The School District provided school staff email addresses but withheld all non-staff email addresses. In denying Sveom's request, the School District stated that providing the non-staff email addresses would "jeopardize the District's ability to efficiently communicate with parents or guardians who may not want their email addresses publicly disclosed." Sveom filed a petition for writ of mandamus.

Sveom argued the School District's denial was illegal for several reasons. Legal precedent and persuasive authority require release of email lists; the School District released the same information to other requesters; the email addresses of parents are similar to other contact information required to be released; and the School District's reasons for denying the request did not outweigh the public interest in disclosure.

The circuit court granted Sveom's petition for writ of mandamus and for summary judgment. The circuit court ordered the School District to provide the requested list of email addresses. It also granted reasonable attorney fees, costs and damages.

***State ex rel. Bernegger v. Woodall-Vogg*, 2023AP406 (Wis. Ct. App. March 18, 2025) (unpublished)**

This case addressed whether the public records law provides a remedy when an authority fails to create or maintain a record.

Peter Bernegger (Bernegger) submitted public records requests to the Executive Director of the City of Milwaukee Election Commission, Claire Woodall-Vogg (Woodall-Vogg), seeking, in relevant part, input and output data from ballot-on-demand machines and computers connected to the machines (to "mirror the hard drives"). Woodall-Vogg stated that there were no responsive records to portions of the request and denied the request for hard drives stating that hard drives are not records subject to disclosure. Bernegger filed a petition for writ of mandamus seeking to compel Woodall-Vogg to produce all requested records. The circuit court ultimately dismissed the petition and Bernegger appealed.

The court of appeals affirmed. Regarding the "no records" response, citing *State ex rel. Zinngrabe v. School Dist. Of Sevastopol,* 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988), the court of appeals stated that there is no relief under the public

records law when an authority fails to create or maintain a record it should have. Regarding the denial, the court of appeals stated that, while there may be records on the hard drive that would be subject to disclosure, the hard drive itself is not a record.

***State v. Thornton*, 2023AP1596-CR (Wis. Ct. App. March 5, 2025) (unpublished)**

This case addressed whether there was a violation of the public records law.

Ryan Thornton (Thornton) submitted multiple public records requests to the Racine County courthouse for the names and demographic information of the individuals selected for jury duty during the week of his criminal trial and, specifically related to the jurors selected for his voir dire, he requested a "racial distribution summary" of those jurors. The clerk of court provided Thornton with the names and aggregate demographic information of the potential jurors but did not provide individual information stating that the CCAP jury application did not supply a racial distribution summary report for voir dire panels, and pursuant to Wis. Stat. § 19.35(1)(L), the public records law did not require the clerk's office to create a new responsive record by extracting information from other records. Thornton filed a proposed order in his criminal case asking the court to order the clerk of court to provide the requested "racial distribution summary." The circuit court declined the proposed order stating that the clerk of court had already addressed his request. Thornton appealed, pro se.

The court of appeals summarily affirmed the circuit court's order stating that Thornton did not allege a violation of the public records law. Instead, Thorton argued the voir dire panel was "obviously selected in favor of the Prosecution" and that the racial composition was not "just a coincidence," which the court stated was "insufficient to warrant further proceedings."

***Wisconsin Voter Alliance v. Secord*, 2025 WI 2, 414 Wis. 2d 348, 15 N.W.3d 872**

This case addressed whether one court of appeals district is bound by the decision of another court of appeals district.

Wisconsin Voter Alliance (Alliance) filed a petition for writ of mandamus seeking Notice of Voter Eligibility (NVE) forms that Kristina Secord (Secord), the register in probate for the Walworth County circuit court, sent to the Wisconsin Elections Commission (WEC). Secord moved to dismiss the petition stating that NVE forms are exempt from disclosure pursuant to Wis. Stat. § 54.75. The circuit court dismissed the petition, and Alliance filed an appeal with the District II court of appeals.

The District II court of appeals reversed the Walworth County circuit court's decision finding that NVE forms generated because of guardianship proceedings are subject to disclosure. This decision was contrary to an earlier District IV court of appeals decision in *Wisconsin Voter Alliance v. Reynolds,* 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 738, in which the court of appeals had affirmed the Juneau County Circuit Court's dismissal, stating that "Alliance was not entitled to the NVE forms under public records law and § 54.75." Secord filed a petition for review.

The Wisconsin Supreme Court reversed the District II court of appeals decision. The Supreme Court found District II was bound by the District IV decision pursuant to *Cook v. Cook*, 208 Wis. 2d 166, 560 N.W.2d 246 (1997), and remanded. The Supreme Court did not address the substantive issue of whether the NVE forms were subject to disclosure. It also did not address an issue raised by an amicus brief regarding the common law mandamus elements and the burden of proof in public records cases.

***Wisconsin Voter Alliance v. Secord*, 2023AP36 (Wis. Ct. App. March 19, 2025) (unpublished)**

This case addressed whether the records at issue are subject to disclosure.

On remand from the Wisconsin Supreme Court, the District II court of appeals affirmed the circuit court's decision that Notice of Voter Eligibility (NVE) forms are not subject to disclosure because District II was bound by the District IV decision in *Reynolds,* 2023 WI App 66. The Supreme Court found that "[o]n the facts and the dispositive legal issue, the two appeals are virtually indistinguishable." The District II court of appeals stated that it believes the District IV case was wrongfully decided, but that "as a unitary court, we are bound by that opinion's decision to the extent it is not distinguishable."

II. ATTORNEY GENERAL OPINIONS

In 2025, the Attorney General issued no formal or informal opinions within the scope of Wis. Stat. § 19.77.