2024 4th Quarter Correspondence

Index

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX 608/267-2779

October 9, 2024

Nicole Traphan
nictrap@yahoo.com

Dear Nicole Traphan:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 15, 2024, in which you wrote, "I am seeking a Writ of Mandamus for the Wisconsin Department of Health Services and the Wisconsin Department of Military Affairs/Wisconsin Emergency Management to comply with requests for public records pertaining to a radiological emergency preparedness drill with Prairie Island Nuclear Generating Plant on March 15th 2022." You "have and continue to request production of the emergency notification received by the State of Wisconsin on that day you entitled 'Notice of an Unusual Event.'"

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the Wisconsin Department of Health Services (DHS) and Wisconsin Department of Military Affairs/Wisconsin Emergency Management (DMA). 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. For these same reasons, DOJ must decline your request for a Writ of Mandamus.

However, I did contact DHS and DMA to make them aware of your concerns, and I am also copying them on this letter.

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).

While DOJ is unable offer legal advice or counsel in this instance, the Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Legal Counsel, Wisconsin Department of Health Services
Legal Counsel, Wisconsin Department of Military Affairs

y

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behml@doj.state.wi.us
(608) 266-1221
TTY 1-800-947-3529
FAX (608) 267-2779

November 22, 2024

Joel Muhvic
jmuhvic@ameritech.net

Dear Joel Muhvic:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 13, 14, and 16, 2023, regarding the City of Stevens Point Board of Public Works and Common Council. You wrote, "The minutes of the August 29, 2022 Special Common Council Meeting do not state the source of the Resolution, whether the Resolution was discussed, whether the public had an opportunity to provide any input, but noted that the agenda item passed." You asked, "Did the City of Stevens Point short circuit the process?"

The DOJ Office of Open Government (OOG) works to increase government openness and transparency with a focus on the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, and the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. While a portion of your correspondence pertained to the open meetings law, it primarily discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding the Stevens Point's "2023 Algoma Street Reconstruction Plan," the "Plan Referendum," and the "City of Stevens Point Ordinances, Chapter 2: Standing Rules For the Government of the Common Council." We can, however, provide you with some information about the open meetings law that we hope you will find helpful.

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

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. I-95-89 (Nov. 13, 1989).

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

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

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.

In your correspondence, dated February 13, 2023, you wrote, "I am formally requesting the Attorney General to file an action for mandamus. This request is to obtain public records from the City of Stevens Point which have thus far been requested but not produced, specifically, complete documentation submitted by Strand Associates." In a subsequent email received that same day, it appears that you received a response to this public records request. In that case, an action for mandamus would no longer be necessary. For your information, 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, a 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 an action for mandamus no longer appears necessary, and because 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.

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

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

The information provided in this letter is provided pursuant to Wis. Stat. §§ 19.39 and 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

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

November 27, 2024

Dean Langenfeld
dean.langenfeld@gmail.com

Dear Dean Langenfeld:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, received January 15, 2024, in which you asked, "Who within the DOJ could I file a complaint against regarding a violation of a school board not following Wisconsin statutes?" You wrote that the "Raymond school board was directed via a motion at the annual meeting on 8/23/2023" that it was "prohibited from defending against a legal action or utilizing any District funds to obtain legal services or counsel for the defense of any discrimination claim brought forth by any District employee." You continued, "In the board packet for the Jan 15th, 2024 BOE meeting, within the check ledger a check was issued to the law firm Renning Lewis & Lacy." According to your correspondence, the agenda for this meeting stated that a closed session would be held pursuant to Wis. Stat. § 19.85(1)(c) and (1)(g), and "[s]pecifically, to discuss and take action, if appropriate, concerning a complaint and threats of litigation regarding school district meetings, discrimination, and administrator employment/resignation."

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 may have pertained to the open meetings law, it also discussed matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns regarding the school board's payment to Renning Lewis & Lacy and specific actions taken by the school board. We can, however, provide you with information about the open meetings law that we hope you will find helpful.

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

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

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

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

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

Another closed session exemption, Wis. Stat. § 19.85(1)(g), authorizes a closed session for "[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation which it is or is likely to become involved." The presence of the governmental body's legal counsel is not, in itself, sufficient reason to authorize closure under this exemption. The exemption applies only if the legal counsel is rendering advice on strategy to adopt for litigation in which the governmental body is or is likely to become involved.

In your correspondence you asked, "Who within the DOJ could I file a complaint against regarding a violation of a school board not following Wisconsin statutes?" Under the open meetings law, the Attorney General and the district attorneys have authority to enforce

the law. Wis. Stat. § 19.97(1). The Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. While you did not specifically request the Attorney General to file an enforcement action, nonetheless, we respectfully decline to file an enforcement action on your behalf.

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). For further information, please see pages 32-33 of the Open Meetings Law Compliance Guide and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a template for a verified open meetings law complaint. If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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

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

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

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

Sincerely,

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

November 27, 2024

Jeffrey Patterson
pattersonlegal@comcast.net

Dear Jeffrey Patterson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 3, 2024, in which you wrote, "My concerns regarding Manitowoc County's compliance with Wis. Stat. Sec. 19.31 - 19.39 are two-fold and deal with 1) the timing of Manitowoc County's response to my November 28, 2023 Open Records Request (no response has been made), and 2) the false statements of Manitowoc County's representatives regarding the existence of open records." You wrote, "I request DOJ to take action under Wis. Stat. 19.37."

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).

Your correspondence stated that "[o]n November 28, 2023, [you] made an Open Records Request to the Manitowoc County Clerk." On December 15, 2023, Manitowoc County Corporation Counsel Peter Conrad provided a status update to you which stated, "Given the size of the request, the county is still in the process of compiling a response. I do not have an estimated date of completion at this time, but rest assured that we a[r]e working on your request." 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").

Upon review, many of the requests that comprise your November 28, 2023 "Open Records Request to the Manitowoc County Clerk" seem to be requests for answers to various questions rather than requests for specific records. The public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

Some months have elapsed since you first contacted DOJ about your records request, and it is possible that, in that time, you have received a satisfactory response from Manitowoc County. We hope that that is the case. I am copying Manitowoc County Corporation Counsel Peter Conrad on this letter and invite him to contact our office should concerns about your public records request remain.

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

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Manitowoc County Corporation Counsel Peter Conrad (via email: PeterConrad@manitowoccountywi.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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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
FAX 608/267-2779

November 27, 2024

Jacob Resneck
Wisconsin Watch
jresneck@wisconsinwatch.org

Dear Jacob Resneck:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 14, 2023, regarding "potential improper applications of 'victims rights' statutes by law enforcement in the post-Marsy's Law environment." You wrote that your colleague "requested a police report" from the Grand Chute Police Department, "[b]ut the record was withheld on the following grounds:"

- State and federal law recognizes rights of privacy and dignity for crime victims and their families.
- The Wisconsin Constitution, art. I, § 9m, states that crime victims should be treated with 'fairness, dignity, and respect for their privacy.' Wisconsin Stat. § 950.04(1v)(ag), (1v)(dr), and (2w)(dm) further emphasize the importance of the privacy rights of victims and witnesses.
- The Wisconsin Statutes recognize that this state constitutional right must be honored vigorously by law enforcement agencies.

You further wrote, "We respectfully request the Attorney General's office to interview [sic] under Wis. Stat. 19.37(1) and ask Grand Chute to release the police report involving Lorenzo Backhaus."

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

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the

strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo,* 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

Wisconsin Const. art. I, § 9m provides, in part, that crime victims are entitled to the rights "to be treated with dignity, respect, courtesy, sensitivity, and fairness" and to privacy. Related Wisconsin statutes recognize that these self-executing state constitutional rights must be vigorously honored by law enforcement agencies and that crime victims include both persons against whom crimes have been committed and the family members of those persons. Wis. Stat. §§ 950.01 and 950.02(4)(a). The Wisconsin Supreme Court, speaking about both Wis. Const. art. I, § 9m, and related victim rights statutes, has instructed that "justice requires that all who are engaged in the prosecution of crimes make every effort to minimize further suffering by crime victims." *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ¶ 26, 278 Wis. 2d 216, 692 N.W.2d 623.

The constitutional provisions of Marsy's Law and the statutory provisions in Wisconsin Statutes Chapter 950 do not create an absolute denial of access to information about victims contained in records. Rather, in the absence of other exemptions or laws barring the release of such records and information, records custodians and authorities must continue to apply the public records law balancing test.

In applying the balancing test, records custodians should be mindful that the victims' rights set forth in Marsy's Law are established in the Wisconsin Constitution and are now self-executing, thereby strengthening public policies that, in some instances, might favor more limited access or nondisclosure of records or information. In other instances, the presumption of complete access to records and the strong public policies favoring disclosure may still outweigh the privacy interests in nondisclosure.

Under the public records law balancing test, records custodians must determine whether the strong public policy favoring disclosure of records is overcome by some even stronger public policy favoring limited access or nondisclosure. An exhaustive list of policies or factors to consider under the balancing test is not possible, as each and every record must be analyzed on its own, on a case-by-case basis, considering the unique circumstances of each record. However, under Marsy's Law and Wisconsin Statutes Chapter 950, public policies favoring nondisclosure may include:

- Protecting the privacy of victims by avoiding any unnecessary public attention or possible harassment of victims;
- Affording dignity, respect, courtesy, and sensitivity to victims by minimizing victims' further suffering, exploitation, re-traumatization, and re-victimization;
- Protecting the confidentiality of victims' personally identifiable information and contact information when necessary to afford victims reasonable protection from the accused or to ensure victims' safety;
- Preventing any economic, physical, or psychological effects upon victims that release of records or information might cause; and

- Facilitating victims' cooperation with the investigation and prosecution of crimes.

Again, the presence of one or more policy favoring nondisclosure will not always justify withholding or redacting records. Further, in addition to the strong public policy favoring disclosure, there may be other factors in a particular case that favor disclosure. Taking all of these factors into account, records custodians must apply the balancing test to the facts of a particular case to determine whether disclosure is appropriate.

On May 13, 2021, DOJ's Office of Open Government issued an advisory on Marsy's Law and the public records law. That advisory is available on DOJ's website at https://www.doj.state.wi.us/sites/default/files/news-media/OOG%20Advisory%20-%20Marsy%27s%20Law.pdf.

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

If an authority believes that certain information in an investigative report requires redaction in consideration of crime victims, it does not necessarily mean that the entire investigative report can be withheld. If part of a record cannot be disclosed but part of a record is disclosable, the authority must disclose that part. Wis. Stat. § 19.36(6). In this instance, DOJ has insufficient information from your correspondence to evaluate whether the Grand Chute Police Department properly withheld the police report. The Grand Chute Police Department is copied on this letter, and we invite them to contact DOJ with any questions regarding your matter.

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:

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Captain Colette Jaeger, Grand Chute Police Department (via email: Colette.jaeger@grandchutewi.gov)

y

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX (608) 267-2779

November 27, 2024

Beth Trudell
[redacted]
Sobieski, WI 54171

Dear Beth Trudell:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 21, 2023, in which you enclosed a verified complaint "in regards to the Little Suamico Town Board." In your verified complaint you wrote, "On August 29, 2022, Little Suamico Town Board held a special working meeting at 9 a.m. The meeting was NOT noticed properly. Clerk/Treasurer Lisa Glinski only placed the notice in one public location (though she initialed she placed three notices as required under the law)." You are sending the verified complaint to DOJ "[a]s per statute WI 19.84 if 20 days has passed and no response from Oconto County District Attorney occurs the verified complaint should be sent to the Attorney General in Wisconsin."

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

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

It is important to note that notice to the public, notice to news media, and notice to the official newspaper are separate requirements. First, as to the public notice, communication from the chief presiding officer of a governmental body or such person's designee shall be made to the public using one of the following methods: 1) Posting a notice in at least three public places likely to give notice to persons affected; 2) Posting a notice in

at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's Internet site; or 3) By paid publication in a news medium likely to give notice to persons affected. Wis. Stat. § 19.84(1)(b). If the presiding officer gives notice in the third manner, he or she must ensure that the notice is actually published.

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

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

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

Based solely on your correspondence and certified complaint, DOJ lacks sufficient information to determine whether or not Clerk/Treasurer Lisa Glinski provided adequate notice to the public of the meeting in question.

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). In your

correspondence you stated that you filed your open meetings law complaint with the Oconto County District Attorney. As more than 20 days have elapsed since then, if the district attorney has refused or otherwise failed to commence an action to enforce the open meetings law, you may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX 608/266-2779

December 13, 2024

Tim Hundt
news@vernonreporter.com

Dear Tim Hundt:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 25, 2023, regarding "a potential open meetings violation." You wrote,

> In Oct[ober] of 2022 the Vernon County Board of Supervisors held a closed session about restructuring county government, switching from a county administrator back to a county coordinator. The exception to the opening meeting cited on the agenda was that the discussion may involve performance of the county administrator. The problem is they came back into open session and said, in that same meeting and subsequent meetings, that they had no issue with the administrators['] performance. One of the board supervisors later filed an open meetings complaint with Vernon County District Attorney Tim Gaskell. Supervisor Mary Henry would later meet with the county board chair, Corp Counsel and DA Gaskell but no report or conclusion was ever given to the supervisor or the board. I have also made an inquiry about an opinion on the matter and have received no response.

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).

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

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

DOJ has insufficient information from your correspondence to evaluate whether the Vernon County Board of Supervisors properly applied the Wis. Stat. § 19.85(1)(c) exemption when going into closed session during the October 2022 meeting. The Chairman of the Board of Supervisors is copied on this letter to make the Board aware of your concerns.

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

More frequently, the district attorney of the county where the alleged violation occurred may enforce the law. However, in order to have this authority, an individual must file a verified complaint with the district attorney. Wis. Stat. § 19.97(1). From your correspondence, it appears that a member of Vernon County government may have filed an open meetings complaint with the district attorney in 2022 or 2023. If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Lorn Goede, Board of Supervisors Chair (via email: chair@vernoncounty.org)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

December 13, 2024

Kamron Johnson
kamjohns@msn.com

Dear Kamron Johnson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 24, 2023, regarding your public records request for police dash camera and body camera footage. You wrote, "I am respectfully seeking a review of my Open Records Request that was denied by the Eau Claire County Sheriff's Department."

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

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

You provided the Eau Claire County Sheriff's Office's response to your public records request. The response stated, "This case is under active investigation and release of the information contained in this report could jeopardize the conclusion of the inquiry and/or the ability to successfully prosecute any suspect(s) involved." Whether an investigation or litigation is ongoing and whether the confidentiality of the requested records is material to that ongoing investigation or litigation are factors that an authority may consider in applying the balancing test. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306,

646 N.W.2d 811; *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 824-27, 429 N.W.2d 772 (Ct. App. 1988); *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584. An authority could determine that release of records while an investigation or litigation is in progress could compromise the investigation or litigation. Therefore, when performing the public records balancing test, an authority could conclude that the public interest in effectively investigating and litigating a case and in protecting the integrity of the current investigation or litigation outweighs the public interest in disclosing the requested records at that time. *Id.*; Wis. Stat. § 19.35(1)(a). In light of this, a reviewing court would consider the totality of the circumstances to determine if the Eau Claire County Sheriff's Office erred in performing the balancing test and deciding to deny your records request.

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

The public records law 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:

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

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Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
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December 13, 2024

Mike Jurmu
mikejurmu@gmail.com

Dear Mike Jurmu:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 21, 2023, in which you requested that "the Attorney General's Office consider filing a mandamus action to compel production of records [you] requested from the Shawano County School District." You wrote, "I don't believe the denial to be nearly sufficient. . . . I think they made no good faith effort to provide information that doesn't inappropriately identify students."

The Shawano School District's response to your public records request stated that "your request for bullying complaints, student harassment complaints, disciplinary records and student health records must be denied. These documents are confidential student records, which may not be disclosed . . . . This confidentiality is established by state law, Wis. Stat. § 118.125; federal law pursuant to the Family Educational Rights and Privacy Act (FERPA) and implementing regulations found in 34 CFR Part 99; and by Board Policy 8330." 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." Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. A statute may provide such an exception. If a federal or state statute prohibits the release of a record in response to a public records request, an authority's records custodian cannot release the record. Wis. Stat. § 19.36(1). (The common law and the public records law balancing test, which weighs the public interest in disclosure of a record against the public interest in nondisclosure, also provide other exceptions to disclosure.)

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

Wis. Stat. § 118.125(1)(d), "[p]upil records" means "all records relating to individual pupils maintained by a school," subject to some exceptions not relevant here.

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

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

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).

DOJ has insufficient information to evaluate whether the Shawano School District properly denied your request. The Shawano School District is copied on this letter to make them aware of your concerns.

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Kurt Krizan, Superintendent, Shawano School District (via email: kkrizan@shawanoschools.org)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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P.O. Box 7857
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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

December 13, 2024

Michael Kieser
keyesecon@gmail.com

Dear Michael Kieser:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 5, 2024, in which you presented a series of hypothetical situations regarding public records requests and the maintenance of public records, and asked about the legal obligations and remedies raised by each hypothetical. Each of your three hypotheticals is discussed separately, below.

First, please be advised that 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. To the extent your inquiries pertain to the open meetings law or the public records law, the OOG is able to provide information that we hope you will find helpful. However, to the extent your inquiries implicate laws or issues outside this scope, the OOG is unable to offer you information or insight.

Hypothetical Situation #1:

> Jane Q. Public files an open records request with her local school district. Prior to fulfilling the request, the superintendent working along with a school board member makes alterations to requested documents. What, if any laws have been broken by the superintendent and/or the school board member?

This hypothetical involves the public records law. The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Statutes, case law, and the public records law balancing test provide such exceptions. Exceptions to disclosure should be narrowly construed to effectuate the law's purpose of ensuring government openness and transparency.

While "alterations" to documents may take many forms, one way in which a document might be "altered" from its original state is through redaction. Certain information and

material may, if appropriate, be redacted from records pursuant to statute, the common law, or the balancing test. In performing the balancing test, a records custodian must determine 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 redacts all or part of a record, it constitutes a denial, or partial denial of a public records request. If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. *See* Wis. Stat. § 19.35(4)(b).

Based solely on your correspondence, OOG lacks sufficient information about the hypothetical "alterations" made to determine whether such alterations would be permissible (i.e., redactions pursuant to the public records law).

> Hypothetical Situation #2:
>
> Ima Ann Employee works in the school's district office and has knowledge the documents were altered. She shares the information with the head of the district's Human Resources Department. What, if any legal obligation does the HR Director have to report the alterations of the document?

It appears that the subject matter of this hypothetical is outside of the OOG's scope. Therefore, we are unable to provide information or insight regarding this hypothetical.

> Hypothetical Situation #3:
>
> A few months later, the superintendent announces a plan to restructure the central office staff. As part of the restructure plan, Ima Ann Employee's position is eliminated. There are over 650 people employed by this school district. The only person in the district laid off as a result of the restructure plan is Ima Ann Employee. If it were shown that Ima Ann Employee's termination was related to her knowledge of the alteration of the documents, what if any consequences would the school district face?

It appears that the subject matter of this hypothetical is outside of the OOG's scope. Therefore, we are unable to offer you information or insight regarding this hypothetical.

You may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a

private attorney may charge attorney's fees. You may reach the service using the contact information below:

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

If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX (608) 267-2779

December 16, 2024

David Hodapp
inspector.dave@yahoo.com

Dear David Hodapp:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 30, 2023, regarding your March 18, 2023 public records request to the Milwaukee County Community Reintegration Center (MCCRC). You "received 47 pages of documents from the MCCRC" in response to your request. You wrote, "On June 5, 2023, I submitted an email to Lt. Jones which outlined my position that the response from MCCRC was incomplete." You "have not received any additional documents from MCCRC" and "MCCRC has failed to respond timely and completely to [your] FOIA request." You requested DOJ "enforce[e] compliance" with your public records request.

Your correspondence references the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA applies to federal agencies and helps ensure public access to records of federal agencies. In Wisconsin, the state counterpart to FOIA is the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority."

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

The public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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

The Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. For example, if it becomes apparent to an authority that a public records request may require a longer response time, it may be prudent for the authority to send the requester a letter providing an update on the status of the response and, if possible, indicating when a response might be anticipated. Similarly, if an authority receives an inquiry from a requester seeking an update on the status of the request, it is advisable for the authority to respond to the requester with an update. It is often mutually beneficial for a requester and an authority to work with each other regarding a request. This can provide for a more efficient processing of a request by the authority while ensuring that the requester receives the records that he or she seeks.

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,[1] or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). In your correspondence you stated that you had submitted a request for mandamus to Milwaukee County Corporation Counsel, and that your request had been denied because MCCRC was their client. 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.

However, we are copying the MCCRC on this letter to make them aware of your concerns.

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[1] In Milwaukee County, the Milwaukee County Office of Corporation Counsel—not the district attorney—serves as legal counsel for the purposes of enforcement of the public records law.

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Milwaukee County Community Reintegration Center

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX 608/267-2779

December 16, 2024

Michael Rost
michael@alliumdata.com

Dear Michael Rost:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 9, 2024, in which you wrote:

> I originally reached out to the Wisconsin Department of Workforce Development and requested a bulk download of the workers compensation policy data maintained by the state. They referred me to the Wisconsin Compensation Rating Bureau (WCRB) who further referred me to an attorney in private practice who responded to the request with a pseudo-denial stating that the WCRB isn't subject to public records and that the records requested we're [sic] exempt from disclosure. He cited a letter from 1999 and stated my request would be addressed at a board meeting in March. I'm appealing the response and asking for an opinion on whether either the WCRB or the DWD should provide the requested information.

In your correspondence, you provided the email chain with the Wisconsin Department of Workforce Development (DWD) and the WCRB regarding your request. DWD's response to your request stated, "DWD does not maintain the information you are requesting." WCRB's response, through its attorney, to your request stated, in part, "the WCRB is not required, by [the public records] law, to respond to your request in writing because the WCRB is not subject to an 'open records request'."

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

Additionally, with respect to DWD, DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent DWD. 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 DWD to make them aware of your concerns.

OOG reviewed your correspondence, DOJ's 1999 letter you referenced, and a 1982 Attorney General Opinion relied upon by the WCRB. OOG also contacted the WCRB and discussed your concerns with the WCRB. DOJ's 1999 letter states the WCRB is not a state agency and that the law prohibits the WCRB or any of its employees from making any of the information it collects public except as required by law in accordance with its rules (citing Wis. Stat. § 626.32(1)(a)). This statute falls outside the scope of our office.

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

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Deputy Chief Legal Counsel, Wisconsin Department of Workforce Development
(via email: JenniferL.Wakerhauser@dwd.wisconsin.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX 608/267-2779

December 16, 2024

Brent Thye
Perfusion Pay
perfusionpay@gmail.com

Dear Brent Thye:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 31, 2023, in which you requested "an action for mandamus be brought asking University of Wisconsin Hospitals and Clinics Authority ('UWHCA'), which I will refer to as 'UW Health,' to produce the [total compensation] records I have requested." In response to your public records request UW Health wrote, "UW Health is denying your request for the . . . Compensation Data" for the following reasons: (1) ". . . UW Health employees are not state employees"; (2) "except for information that is otherwise publicly available, UW Health considers Compensation Data to be a 'trade secret,' as defined in Wis. Stat. § 134.90(1)(c) and, therefore, not subject to disclosure in response to the request under the Wisconsin Public Records Law (Wis. Stat. § 19.36(5))"; and (3) the "balancing test."

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

The public records law defines an authority as any of the following having custody of a record:

> a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or

> municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of "authority" is subject to the provisions of the public records law. The University of Wisconsin Hospitals and Clinics Authority was created by statute. *See* Wis. Stat. § 233.02(1) ("There is created a public body corporate and politic to be known as the 'University of Wisconsin Hospitals and Clinics Authority'"). Therefore, it falls within the definition of an "authority" and is subject to the provisions of the public records law. *See also* Wis. Stat. § 233.01, *et seq; Wis. Stat. § 233.12 (governing maintenance of records); Wis. Stat. § 233.13 (providing that certain records may be "closed to the public").*

However, I am copying the University of Wisconsin Hospitals and Clinics Authority on this letter to ensure that they are aware of your concerns.

If you would like to learn more about the public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law, Wis. Stat. §§ 19.31 to 19.39, and maintains a Public Records Law Compliance Guide on its website.

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,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

cc: UW Health Corporate Governance

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX 608/267-2779

December 16, 2024

Kate Arnold Ullman
kateaullman@gmail.com

Dear Kate A. Ullman:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 8, 2024, in which you discussed two "concerns related to how [your] local school board is using closed sessions." First, you asked if it would "ever be appropriate for the board to discuss and vote to censure a board member, and remove her from committee work for a year, in a closed session." Second, you asked if the Wisconsin Open Meetings Law allows the school board to "never announce[ ] the result of closed session votes or any actions taken in closed session," and not include that information in meeting minutes.

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).

Your first question is whether your local school board acted unlawfully by discussing and voting in closed session to censure a board member and remove her from committee work for one year. Wisconsin Stat. § 19.85 lists exemptions in which meetings may be convened in closed session. Any exemptions to open meetings are to be viewed with the presumption of openness in mind. Such exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993). The exemptions should be invoked sparingly and only where necessary to protect the public interest and when holding an open session would be incompatible with the conduct of governmental affairs. "Mere government inconvenience is . . . no bar to the requirements of the law." *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present of the nature of the business to be considered at the proposed closed session and the specific

exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

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

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

We lack sufficient information to properly evaluate whether your local school board was authorized, by an exemption in the open meetings law, to enter into closed session. However, after a review of all relevant facts, a court could determine that a closed session was proper under the cited exemptions.

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

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

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

Turning now to the situation discussed in your correspondence, the open meetings law would not require the school board to create meeting minutes including "the result of closed session votes or any actions taken in closed session." That said, the open meetings law does require the school board to create and preserve a record of all motions and roll-call votes, from both open and closed sessions. When you write that the school board "never announces" results of closed session votes or actions taken in closed session, to the extent that such information is recorded, the school board would likely be in compliance with the open meetings law. DOJ lacks sufficient information to determine conclusively whether the school board's recordkeeping practices do or do not comply with the open meetings law.

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

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:s

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
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
FAX (608) 267-2779

December 18, 2024

Clayton Hemphill
chemphill22@gmail.com

Dear Clayton Hemphill:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 3, 2022, in which you wrote, "I'm inquiring about a possible open meetings law violation from the Cudahy School District." You wrote, "the March 30th, 2020 meeting minutes . . . do not show any record of a motion or vote being taken by the board regarding my employment. . . . I thought all official board actions had to be documented." You also wrote, "the former superintendent admit[ted] to discussing in that same closed session on March 30, 2020, the general reorganization of the Athletics and Recreation departments. . . . The restructuring went through with no documented board action." You wrote, "Please let me know if this is a violation or potential violation of open meetings."

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

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. De Moya Correspondence (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. I-95-89 (Nov. 13, 1989).

As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89 (Mar. 8, 1989); *see, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk), 60.33(2)(a) (town clerk), 61.25(3) (village clerk), 62.09(11)(b)

(city clerk), 62.13(5)(i) (police and fire commission), 66.1001(4)(b) (plan commission), 70.47(7)(bb) (board of review).

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

We reviewed the agendas and meeting minutes you provided with the above principles in mind. At this time, we have insufficient information to thoroughly evaluate whether any potential violation of the open meetings law occurred. Based on the materials included with your correspondence, a reviewing court could potentially determine that the school district's board included sufficient details in their agendas and minutes, including their minutes from closed sessions of otherwise open meetings.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

December 18, 2024

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 30, 2023, in which you wrote, "Please consider this a formal request for AG Kaul to investigate and bring charges on the attached complaint, which was also filed with the Rock County DA today." The verified complaint alleges Rock County Board Chairman Richard Bostwick (Bostwick) and the members of selection committees appointed by Bostwick "violated the Open Meetings Law on multiple occasions by (1) failing to provide notice of meetings; and (2) failing to hold meetings in open session."

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

Your verified complaint stated, "In public comments, Rock County Corporation Counsel Richard Greenlee claimed that the selection committee was not a 'governmental body' subject to the Open Meetings Law because it was an advisory body only making a recommendation. *See* THE JANESVILLE GAZETTE, *supra*." 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).

As mentioned above, state and local bodies created by "rule or order" are included in the definition of "governmental body." The term "rule or order" has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties. 78 Op.

Att'y Gen. 67, 68–69 (1989). This includes directives from governmental bodies, presiding officers of governmental bodies, or certain governmental officials, such as county executives, mayors, or heads of a state or local agency, department, or division. *Id*. Therefore, if the two groups in question were created by order of the chair of the county board, and the groups had defined memberships and collective responsibility—even if that responsibility did not include final decision-making power—a court could determine the groups were governmental bodies subject to the open meetings law.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. As your client's 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 client's 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). In your correspondence you stated that you also filed the verified complaint with the Rock County District Attorney. If the district attorney refuses or otherwise fails to commence an action to enforce the open meetings law within 20 days after receiving the verified complaint, the individual may bring an action in the name of the state. Wis. Stat. § 19.97(4). (Please note a district attorney may still commence an enforcement action even after 20 days have passed.) Such actions by an individual must be commenced within two years after the cause of action accrues. Wis. Stat. § 893.93(2)(a).

We contacted the Rock County District Attorney's office and obtained a copy of DA O'Leary's response to your verified complaint. It appears that the DA O'Leary "sought equitable relief" rather than pursuing litigation, and that, as a result, Rock County agreed to change the process by which it handles recommendations for open county board positions.

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.

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Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah