2025 3rd Quarter Correspondence

Index

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
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July 18, 2025

Tom Kamenick
tom@wiopenrecords.com

Dear Tom Kamenick:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 6, 2025, and addressed to the Milwaukee County Corporation Counsel and DOJ, regarding Scripps Media, Inc. d/b/a WTMJ-TV's "verified complaint under Wis. Stat. § 19.97(1) against the St. Francis Public School District and its Board of Education (collectively, 'St. Francis Public School District')." The complaint alleges the St. Francis Public School District "violated the Wisconsin Open Meetings Law" by its "[f]ailure to commence [the June 2, 2025 school board] meeting in open session," "[f]ailure to hold [the] meeting open to all citizens at all times," and "[f]ailure to permit recording" of the meeting.

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 "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2). Similarly, an "open session" is defined in Wis. Stat. § 19.82(3) as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." A governmental body should ensure that the meeting location, such as a public school building, is not locked at the time an open meeting is scheduled to occur. As a best practice, a governmental body should ensure the meeting location is unlocked and otherwise accessible to the public prior to the scheduled start of a meeting. Doing so provides members of the public time to situate themselves in the meeting location before the meeting begins and avoids confusion for those arriving prior to the start of the meeting.

Members of the public have a right to not only attend and observe the meetings of governmental bodies held in open session but also to record, film, or photograph open session

meetings. Pursuant to Wis. Stat. § 19.90, a governmental body "shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting" as long as the recording, filming, or photographing does not interfere with the conduct of the meeting or the rights of meeting participants. Therefore, your client had a right to attend and record, film, or photograph the open session meeting of the St. Francis Public School District Board of Education without prior notification to the school board. As a best practice, governmental bodies should operate under the presumption that members of the public will attend and record, film, or photograph open session meetings.

The allegations raised in your complaint are concerning and a video recording of certain circumstances referenced in your complaint depict conduct contrary to the open meetings law's policy of government openness and transparency. After receiving your complaint, I contacted the St. Francis Public School District in an attempt to discuss your concerns, but I did not receive a response. I am copying the school district on this letter. We invite the St. Francis Public School District or their legal counsel to contact our office with any questions they have about the open meetings law's requirements and encourage the school district to utilize the various open government resources available on DOJ's website. Since receiving a copy of the verified complaint, the Milwaukee County Corporation Counsel, the St. Francis Public School District, and the St. Francis Public School District Board of Education reached a settlement agreement regarding the allegations raised in your complaint, and as a result, the Milwaukee County Corporation Counsel will not commence an enforcement action.

As you are aware, under the open meetings law, the Attorney General and the district attorneys[1] 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. More frequently, the district attorney of the county where the alleged violation occurred, or in Milwaukee County, the Milwaukee County Office of Corporation Counsel, may enforce the law. The Milwaukee County Corporation Counsel, the St. Francis School District, and the St. Francis School District Board of Education settled the matter that was the subject of your complaint, and DOJ respectfully declines to file a further enforcement action at this time.

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). 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.

[1] In Milwaukee County, the Milwaukee County Office of Corporation Counsel serves as legal counsel for the purposes of enforcement of the open meetings law.

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: St. Francis Public School District

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 23, 2025

Patrick Abt
Ideal Construction LLC
abt@mwt.net

Dear Patrick Abt:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 26, 2022, in which you wrote, "I would like to file a complaint against Couleecap, Inc. . . . and request your assistance in obtaining public records, as my requests have been denied."

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 Wisconsin 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.

In your correspondence you provided Couleecap's response to your public records request, which stated, "Couleecapp is not a public body and does not hold public records." As stated above, only an entity that falls within the definition of an "authority" is subject to the public records law. It does not appear that Couleecap would fit within this definition.

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.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

DOJ is 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

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September 23, 2025

Matthew Hagar
hagy541@yahoo.com

Dear Matthew Hagar:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 1, 2023, regarding your public records request to the Village of Redgranite. You wrote that you "received a response with an invoice for 5 of the 7 things" and that you were "charged an extremely high amount of 72 dollars for 4 copies." When you "express[ed] [your] concerns about being overcharged," you were "told that the clerk had spoken with the village attorney" and that you were "in fact over charged and the difference would be adjusted on the rest of [your] request." You then stated that "it has been over 3 months and my request has not been fulfilled along with not receiving an updated invoice showing how much I was overcharged. The Village [o]f Redgranite has not once denied any of my request and appears to be ignoring my emails." Additionally, you believe that the remainder of your request "should only require a simple computer search and should not take 3 months to complete."

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 does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

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

Regarding fees, the public records law does allow an authority to charge fees for certain costs incurred during the fulfillment of public records requests. Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs *of four specific tasks:* (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54, 341 Wis. 2d 607, 815 N.W.2d 367 (citation omitted) (emphasis in original). In certain circumstances, an authority that is a law enforcement agency may also charge for redaction of audio and video recordings. See Wis. Stat. § 19.35(3)(h).

The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e). An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring). Likewise, if an authority uses a contractor to assist in processing the authority's public records requests, the authority cannot pass along the contractor's redaction costs to the requester. Except for certain circumstances as provided in Wis. Stat. § 19.35(3)(h), the costs of redaction are not a permissible fee under the public records law, no matter if the fees are incurred by the authority itself or by the contractor.

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

For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records

Law, which was issued on August 8, 2018 and can be found on DOJ's website (https://www.wisdoj.gov/Documents/8.8.18_OOG_Advisory_Fees_0.pdf).

There may be other laws outside of the public records law establishing fees for the records in question, potentially rendering those fees permissible under the public records law. *See* Wis. Stat. § 19.35(3) (allowing fees outside the public records law if those fees are established by another law). However, the Office of Open Government (OOG) is unable to offer you assistance regarding other laws that are outside the scope of the OOG's responsibilities and authority under the public records law.

Because time has passed since you sent your correspondence, it is possible that you and the Village of Redgranite have since resolved the matter of the fees it charged you when responding to several of your requests. The OOG generally encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. It is also helpful in resolving issues such as those related to fees. If a requester is concerned about potential fees, it may be helpful that he or she express such concerns in the request. For example, a requester might ask to be notified in advance if fees may exceed a certain amount (e.g., $50.00).

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).

However, I am copying the Village of Redgranite to make them aware of your concerns, and I invite them to contact me should they have questions.

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

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

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

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

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Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Clerk, Village of Redgranite (via email: clerk@vl.redgranite.wi.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 23, 2025

Jami Hayes
jamisgems@outlook.com

Dear Jami Hayes:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 28, 2023, in which you wrote, "My mother requested body Cam footage (audio) when she got it. It was edited there was sections missing that I said and she said. . . . We said nothing personal on the audio. They edited the parts that would get them in trouble. How do we get the whole unedited version?"

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).

Without information such as the law enforcement agency from which you and your mother requested the footage, DOJ is unable to take action such as contacting the law enforcement agency. We also lack sufficient information to evaluate whether or not the alleged "editing" of the body camera footage complied with the public records law. However, we will provide information about the public records law, including your options when a records request is denied, that you may find helpful.

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).

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f 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).

With respect to law enforcement agencies' body camera data, that data is subject to the right of inspection and copying pursuant to the public records law. Wis. Stat. § 165.87(3)(b). However, it is the public policy of the state of Wisconsin to maintain the privacy of a record subject who is the victim of a sensitive or violent crime; a record subject who is a minor; and a record subject in a location where they have a reasonable expectation of privacy. Therefore, body camera date regarding such subjects shall be provided only if the public interest in allowing access is so great that it outweighs this public policy.

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

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

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.

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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

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September 23, 2025

Laura Kenney
laurie3500@yahoo.com

Dear Laura Kenney:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 3, 2023, in which you wrote, "Are you able to assist me in receiving a copy of a police report? . . . The incident took place on a road in St. Germain or Eagle River."

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).

You may wish to use the public records law to obtain the information you seek by submitting a public records request to the appropriate authority. Based on the information provided in your correspondence, you might consider directing your request to the involved local law enforcement agency, for example the Vilas County Sheriff's Department, Eagle River Police Department, and/or St. Germain Police Department. When submitting a public records request, a requester should take care to ask for *records* containing the information they seek, as opposed to simply asking a question or asking for information. This is important because 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 is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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.

In order to submit a public records request, there are no "magic words" that are required, and an authority may not require that a requester fill out a specific form in order to submit a request. One may submit a request verbally or in writing. A request for records

is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). Under the public records law, a request need not be made in person, and generally, a requester is not required to identify themselves or to state the purpose of the request. *See* Wis. Stat. § 19.35(1)i ("Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request").

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

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

The 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.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 24, 2025

Sergio Padilla
mail4perro@gmail.com

Dear Sergio Padilla:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 27, 2024, in which you wrote, "There's been a misuse of tax dollars by the Town of Wilson Chairman of the Board. I made an open record request last year and have recorded [sic] nothing."

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).

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that "if the request for the record was made in

writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

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

Based on your correspondence, we lack sufficient information to evaluate the Town of Wilson's alleged failure to respond to, or denial of, your public records request. That said, the public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

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

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 C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Lili Behm
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September 23, 2025

Charles Smith
csmith@pegasusics.com

Dear Charles Smith:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 12, 2023, in which you wrote, "Please see the attached letter sent to the Chair of the Town of Randall Ethics Committee. The Board has denied an FOIA request limited solely to my personal affairs and has, in my view, committed extortion in attempting to quash my FOIA request. I am seeking your assistance."

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."

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 that your correspondence pertained to alleged extortion, that subject matter is outside the scope of our office. We are therefore unable to provide advice or assistance regarding alleged extortion.

While DOJ lacks sufficient information to evaluate your records request and any response or non-response by the Town of Randall or its Town Board, we can provide general information about the public records law that you might find useful.

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).

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

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

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

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

You may 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

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
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September 24, 2025

Angela B. Anderson
aanderso002@gmail.com

Dear Angela Anderson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 21, 2025, regarding your public records request to the Milwaukee Police Department (MPD). You wrote, "MPD asserts all records in their possession have been released but has not confirmed or denied the existence of supplemental reports or phone extraction records. MPD is directing me to the Wisconsin State Crime Lab for test results, but has not fulfilled their obligation to provide or deny the other records in writing." You requested "DOJ's assistance in ensuring MPD complies with Wisconsin's Open Records Law by either producing the requested records or issuing a proper written denial citing the statutory reason for withholding them."

DOJ is also in receipt of your correspondence, dated September 15, 2025, regarding the above matter and a public records request you submitted to the Wisconsin State Crime Laboratory (WSCL) on August 21. You wrote, "When I did not receive any reply, I sent a follow-up on September 4, 2025. … I have still not received any acknowledgment or response from the crime lab either." Please note that the WSCL is part of DOJ, and our office, DOJ's Office of Open Government (OOG), responds to all public records requests received by DOJ. We looked into this matter, and it appears that the WSCL has not received a records request from you. We invite you to submit your public records request at any time. You may submit the request directly to our office.

For your information, when submitting a public records request, a requester should take care to ask for records containing the information they seek, as opposed to simply asking a question or asking for information. This is important because the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, "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).

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. &*

Constr. Trades Council v. Waunakee Cmty. Sch. Dist., 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). An authority is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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.

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).

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f 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). Importantly, please note

that, in Milwaukee County, it is the Milwaukee County Office of Corporation Counsel, and not the district attorney, that serves as legal counsel for the purposes of enforcing the public records law. Therefore, in Milwaukee County, requesters would submit their written requests to the Office of Corporation Counsel. The Attorney General is authorized to enforce the public records law; however, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

However, I am copying the Milwaukee Police Department to make them aware of your concerns, and I invite them to contact me should they have questions.

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 C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah
Cc: Milwaukee Police Department

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 24, 2025

Robert Gay
g.robert4@yahoo.com

Dear Robert Gay:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 8, 2025, regarding your public records request for property tax records. You wrote, "I have been informed that it will be in essence to[o] much work to produce the records for me. I thought basically there was no time limit on getting the records, so I do not understand. I did not know which direction to go for my local government would not assist me so that is why I am contacting this branch."

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).

You are correct that the public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*,

163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

You stated that the authority from which you requested records informed you "that it will be in essence to[o] much work to produce the records for me." Please note that, based on your correspondence, we lack sufficient information to determine whether the authority's alleged denial of your request was lawful. However, in general, the public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired, and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530.

In your correspondence you wrote, "I am just asking for a direction to go in this 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. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus.

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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Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

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September 24, 2025

Dennis Hohol
dennishohol@outlook.com

Dear Dennis Hohol:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 27, 2023, in which you wrote, "I wanted to obtain from the Joint Towns of Poygan-Poy Sippi Sanitation District in Winnebago County, of which I'm a member of (my home is in the Sanitation District), a list of all the homes by address, that are members of the Sanitation District. Per the commissioners and their attorney, if they were to provide me that information, they would be sued, and denied my request." You asked, "What are my options?"

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."

For your information, pursuant to the public records law, 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).

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f 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). Based on your correspondence, we lack sufficient information to determine whether the Sanitation District properly denied your public records request, and whether it provided adequate reasoning for its alleged denial.

You specifically inquired about your options, in light of the Sanitation District's alleged refusal to provide requested records. Generally, the public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

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

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

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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

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 C. Behm
Lili.behm@wisdoj.gov
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

September 25, 2025

James Jesse
j.b.jesse@att.net

Dear James Jesse:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 1, 2024, in which you wrote, "A new neighbor has moved into my sub division [sic]. Upon a conversation she mentioned information on another neighbor regarding trouble with police. It makes me wonder how she received this information and I am concerned that she may have inquired for information on our family." You asked, "Even though it is open records is there a way to tell if someone has inquired [sic] information on you?"

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).

Public records requests and responses to public records requests are themselves "records" for purposes of the public records law. *Nichols v. Bennet*, 199 Wis. 2d 268, 275, 544 N.W.2d 428 (1996). 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).

Because public records requests and responses are "records" themselves, you may wish to submit a public records request to the appropriate authority to obtain the information you seek. When submitting a public records request, a requester should take care to ask for *records* containing the information they seek, as opposed to simply asking a question or

asking for information. This is important because 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 is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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.

In order to submit a public records request, there are no "magic words" that are required, and an authority may not require that a requester fill out a specific form in order to submit a request. One may submit a request verbally or in writing. A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). Under the public records law, a request need not be made in person, and generally, a requester is not required to identify themselves or to state the purpose of the request. *See* Wis. Stat. § 19.35(1)i ("Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request").

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.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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TTY 1-800-947-3529
FAX (608) 267-2779

September 25, 2025

Marc Marion
trio3design@gmail.com

Dear Marc Marion:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 11, 2024, regarding your request for a copy of the security video from an alleged altercation between yourself and a Porchlight staff member. You wrote, "The legal team I had discussed the matter with also requested a copy of the police report, Madison Police has refused to provide a copy of the report. In light of this now over 60 day delay, I will … also seek assistance from your federal counterpart. However, in the meantime, perhaps you could urge M[r]. Sutter of [Porchlight], to provide these details."

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 Wisconsin 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. Generally, a non-profit organization would not fit within this definition. Based on the information provided on its website, Porchlight appears to be a non-profit organization. Therefore, Porchlight is likely not subject to the public records law.

Regarding the request you submitted to the Madison Police Department, an authority subject to the public records law, for a copy of the police report, 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).

Your correspondence mentions a "60 day delay" following 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").

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

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

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

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

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

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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 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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September 26, 2025

Wayne Brewer, #82189
Waupun Correctional Institution
Post Office Box 351
Waupun, WI 53963-0351

Dear Wayne Brewer:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 1, 2024, in which you asked DOJ two questions "[b]ased on the legislative language used in Ch. 19.39 of the Wisconsin Statute." You first asked, "Are DOC employees at WCI exempt from complying with the formal procedure prescribed by the legislature in Ch. 19.35(3)(f)(4)(a)?" You then asked, "Are DOC custodians of public records at WCI permitted, under 19.35(4)(b) stat., to deny a request by refusing to process it?"

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 Wisconsin Department of Corrections (DOC) is an authority under the public records law, and therefore DOC would be subject to the provisions of the public records law.

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

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

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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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FAX (608) 267-2779

September 29, 2025

John Batchelor
batchj9@gmail.com

Dear John Batchelor:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 23, 2025, in which you wrote, "I have been submitting public records requests to Superintendent Tim Widiker of the St. Croix Central School District for more than two months. . . . I am convinced that Superintendent Tim Widiker has been intentionally delaying the release of any records . . . I believe he is exploiting his role as the Records Custodian for his own records by deliberately delaying the release of any records that might incriminate him in some way." You "request[ed] that [DOJ] investigate [your] formal non-compliance complaint and contact Mr. Widiker regarding his obligation to comply with the public records law."

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 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").

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).

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

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

DOJ is also in receipt of your correspondence, dated September 3, 2025, in which you wrote that St. Croix Central School District is "claiming that it would take <u>four hours</u> to locate <u>each</u> of two personnel files I requested. The District previously claimed that I would need to pay $442.08 in fees for a separate request. I have been requesting records from the District since April, and they have repeatedly failed to provide records 'as soon as practicable and without delay.'" (Emphasis in original.)

The public records law does allow an authority to charge fees for certain costs incurred during the fulfillment of public records requests. Under the public records law, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs *of four specific tasks:* (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54, 341 Wis. 2d 607, 815 N.W.2d 367 (citation omitted) (emphasis in original). In certain circumstances, an authority that is a law enforcement agency may also charge for redaction of audio and video recordings. See Wis. Stat. § 19.35(3)(h).

The amount of such fees may vary depending on the authority. However, an authority may not profit from complying with public records requests. *WIREdata, Inc. v. Vill. of Sussex*,

2008 WI 69, ¶¶ 103, 107, 310 Wis. 2d 397, 751 N.W.2d 736 (concluding an authority may not profit from its response to a public records request but may recoup all its actual costs). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e). An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring). Likewise, if an authority uses a contractor to assist in processing the authority's public records requests, the authority cannot pass along the contractor's redaction costs to the requester. Except for certain circumstances as provided in Wis. Stat. § 19.35(3)(h), the costs of redaction are not a permissible fee under the public records law, no matter if the fees are incurred by the authority itself or by the contractor.

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

For more information on permissible fees, please see the Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law, which was issued on August 8, 2018 and can be found on DOJ's website (https://www.wisdoj.gov/Documents/8.8.18_OOG_Advisory_Fees_0.pdf).

There may be other laws outside of the public records law establishing fees for the records in question, potentially rendering those fees permissible under the public records law. *See* Wis. Stat. § 19.35(3) (allowing fees outside the public records law if those fees are established by another law). However, the Office of Open Government (OOG) is unable to offer you assistance regarding other laws that are outside the scope of the OOG's responsibilities and authority under the public records law.

The OOG also encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. It is also helpful in resolving issues such as those related to fees. If a requester is concerned about potential fees, it may be helpful that he or she express such concerns in the request.

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

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

However, I contacted Superintendent Tim Widiker to discuss your concerns and am also copying him on this correspondence.

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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Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah
cc: Superintendent Tim Widiker, St. Croix Central School District

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

September 29, 2025

Janice Duncan
janicemsduncan@gmail.com

Dear Janice Duncan:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 9, 2023, in which you wrote, "I have a concern that a juvenile police report was released to the public without any redaction of the juvenile's initials, age, gender, and other identifiable information in violation of Wisconsin Code 938.396. Who would I directly contact to provide further details?"

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).

"Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed" unless certain exceptions apply. Wis. Stat. § 938.396(1)(a). For example, "If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report, or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or juvenile a copy of that report." Wis. Stat. § 938.396(1)(c)1.

Depending on the circumstances of a particular situation, including to whom the records are provided, it may be appropriate to include juveniles' initials, ages, and genders in law enforcement records released to the public. DOJ has insufficient information to evaluate the issue regarding the "juvenile police report . . . released to the public" referenced in your correspondence. If you would like to provide further details, you may do so.

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.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 29, 2025

Andy Pelkey
APelkeywi@gmail.com

Dear Andy Pelkey:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 7, 2025, in which you wrote, "I submitted an open records request to the City of Franklin seeking all records regarding my code of conduct complaint against the City Mayor Steve Olson. The City denied, and continues to deny access to 26 of these records, citing attorney client privilege under Wis. Stat. § 905.03." You requested DOJ "[r]eview the City of Franklin's denial."

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).

Attorney-client privileged communications are not subject to disclosure under the public records law. *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d

768, 782-83, 546 N.W.2d 143 (1996); Wis. Stat. § 905.03(2). Therefore, an authority may deny a request if requested records fall within the attorney-client privilege. However, like all exceptions to disclosure, the attorney-client privilege should be narrowly construed to effectuate the law's purpose of ensuring government openness and transparency.

Generally, the attorney-client privilege does not apply to communications from the lawyer to the client, but an exception exists where the disclosure of the communication would directly or indirectly reveal the substance of the client's confidential communication to the client's lawyer. *Juneau Cty. Star-Times v. Juneau Cty.*, 2011 WI App 150, ¶ 36, 337 Wis. 2d 710, 807 N.W.2d 655 (citing *Wisconsin Newspress, Inc.,* 199 Wis. 2d at 783). Wisconsin Stat. § 905.03(1)(d) provides that "a communication is 'confidential' if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication."

The information you provided is insufficient to thoroughly evaluate whether the requested records constitute attorney-client privileged records. However, we hope that you will find the information provided helpful.

Pursuant to Wis. Stat. § 19.35(4)(b), "[i]f 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 your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

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

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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FAX (608) 267-2779

September 29, 2025

Thomas Willecke
thomas.j.willecke@gmail.com

Dear Thomas Willecke:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 16, 2023, in which you wrote, "I seek advice regarding public access to an open meeting where the public in attendance is required to identify themselves by name for recordkeeping purposes. Notwithstanding reasonable limits and requirements during public comments and citizen participation in the open meeting, can a governmental body impose the requirement that citizen members of the public identify themselves in order to attend meetings that are held 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).

While the open meetings law does not expressly address the issue of requiring open meeting attendees to sign in or identify themselves, it does not state that attendees must fulfill certain prerequisites to attend a meeting. In light of the public policy behind the open meetings law, a body cannot require attendees to sign in or otherwise identify themselves in order to simply attend a meeting. The open meetings law requires that all meetings of governmental bodies shall be held publicly and open to all citizens at all times, unless otherwise expressly provided by law. Therefore, a body has no authority to refuse entry to, or remove, attendees who decline to sign in or identify themselves from an open meeting, unless otherwise provided by law.

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

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 30, 2025

Horace Grumb
hgrumb@gmail.com

Dear Horace Grumb:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 10, 2025, regarding your public records requests to the University of Wisconsin – La Crosse (UWLC). You stated that a UWLC staff member "provided me with an initial set of records but claims she is not able to for more information." In its response to your request, UWLC wrote, "Public records requests are intended to request existing records, not create new records through requests for analysis, etc. Your follow-up request does not have an existing record available for me to provide." You asked DOJ to "let me know of your progress with Ms. Tuxen or other UWLC staff as required."

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent UWLC. 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 contacted the University of Wisconsin System and discussed your concerns. I am also copying them on this letter.

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.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx). 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: University of Wisconsin System, Office of General Counsel

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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Lili Behm
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FAX 608/267-2779

September 30, 2025

Laure Rosauer
laurerosauer@gmail.com

Dear Laure Rosauer:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 14, 2025, and a related telephone conversation, in which you discussed several concerns about conduct of the Waterford Town Board.

DOJ's 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 the majority of your correspondence, and the concerns it raised, pertain to the open meetings law, it also discussed a matter outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns regarding "criminal behavior through an abuse of power to obtain an unfair advantage[.]" We will, however, address your open meetings law-related concerns and questions. If you have concerns regarding potential criminal conduct, you may wish to contact your local law enforcement agency or local district attorney's office.

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).

In your correspondence, you extensively detailed several Waterford Town Board meetings, each of which featured a discussion, in open and/or closed session, about whether to "keep and rebuild" the Waterford Police Department or to instead "contract with the Racine County Sheriff's Department" for policing services. You related that, during special meetings on December 30, 2024 and January 15, 2025, votes were taken on actions to support the rebuilding of the Waterford Police Department; per your correspondence, these actions had wide support from members of the public in attendance at the meetings.

Next, you related a series of actions "taken by Chairman Nicolai and Supervisor Ulander to set up the opportunity to enter a motion to contract with the Racine County Sheriff's Office despite agreeing to support the Committee established to keep and rebuild the Waterford Police Department." You asserted that one of these actions was the scheduling of a special meeting on a date – January 20 – when one supervisor, known to support the Waterford Police Department, had a conflict. You suggested that this meeting featured a closed session that was unduly extended so that this supervisor would no longer be in attendance when open session was resumed for voting.

Immediately following that allegedly over-long closed session, motions were made to eliminate most of the Waterford Police Department, terminate the Town's contract with that department, and instead contract with the Racine County Sheriff's Office for policing services. "Chairman Nicolai and Supervisor Ulander were aware they could not introduce this motion and have it pass had Supervisor Schwartz still been in attendance," you wrote. You also stated that the recording of the January 20 meeting did not resume right away when the Town Board returned to open session.

Your correspondence also raised concerns about the agenda for the January 20 meeting, which allegedly stated only "discussion and possible action on policing issues," which "ha[d] been on previous agenda with no votes taken." Additionally, you related that one town supervisor "didn't think the motion had actually passed as there were only 3 votes" on January 20; that several town supervisors were not "informed about the potential for a motion to enter into a contract with the Racine County Sheriff's Office or that a vote would be taken" on January 20; that the Racine County Sheriff's Office planned to make an officer available to cover the January 20 meeting "in the event there was a 'disturbance';" and that Supervisor Ulander said via Facebook that, on January 20, he had "seized an opportunity that presented itself when a supervisor unexpectedly left the meeting early to take action that would have likely ended in a tie vote."

Because of your concerns, you wrote to DOJ to ask whether Town Board Chairman Teri Nicolai and Supervisor Robert Ulander took actions amounting to a "walking quorum or negative quorum violation or rise to a level of criminal behavior through an abuse of power to obtain an unfair advantage."

With respect to your concern about the contents of the notice (agenda) of the January 20 meeting, which allegedly included a lengthy closed session, the open meetings law requires that 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. Merely quoting the entire exemption, without specifying the portion of the exemption under which the body intends to enter into closed session, may not be sufficient. Only aspects of a matter that fall within a specific exemption

may be discussed in a closed session. If aspects of a matter do not properly fall within an exemption, those aspects must be discussed in an open meeting.

Based on your correspondence, we lack sufficient information to properly evaluate whether the Waterford Town Board provided sufficient notice of its intent to enter closed session on January 20, 2025, and the subject matter of the contemplated closed session.

With respect to your concern about a potential "walking quorum … violation" of the open meetings law by Chairman Nicolai and Supervisor Ulander, based on the information provided in your correspondence and the attachments thereto, our office is unable to conclude whether such a violation occurred. For background, a "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. *See State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 92, 398 N.W.2d 154 (1987). The open meetings law's requirements apply to walking quorums. The danger is that a walking quorum may produce a predetermined outcome and thus render the publicly held meeting a mere formality. *See State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 685–88, 239 N.W.2d 313 (1976). Thus, any attempt to avoid the appearance of a "meeting" through use of a walking quorum or other "elaborate arrangements" is subject to prosecution under the open meetings law. *Id.* at 687. The essential feature of a walking quorum is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. A walking quorum, however, may be found when the members: 1) have effectively engaged in collective discussion or information gathering outside of the context of a properly noticed meeting; and 2) have agreed with each other to act in some uniform fashion.

Again, after reading your correspondence and the emails attached to it, we have insufficient information to determine that a walking quorum between Chairman Nicolai and Supervisor Ulander, and/or other members of the Town Board, occurred in the run-up to the January 20, 2025 special meeting. The emails included with your correspondence show conclusively only that the meeting was scheduled for a time and date when at least one town supervisor had a conflict. Other emails address the unrelated question of whether a town supervisor may have a had a conflict of interest regarding police department matters.

Likewise, there is insufficient information to determine whether a negative quorum occurred. For background, "negative quorum" is a concept related to the open meetings law "numbers requirement" established in *Showers*, 135 Wis. 2d at 92. In short, the number of members present must be sufficient to determine the governmental body's course of action (the numbers requirement) for the open meetings law's requirements to apply. However, a negative quorum, the minimum number of a body's membership necessary to prevent action, also meets the numbers requirement. In other words, application of the open meetings law may be triggered by a gathering of enough members of a governmental body that action by that body may be either prevented or determined.

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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Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:s