



Wisconsin Department of Justice Office of Open Government



Wisconsin Department of Justice

Public Records Law: Law Enforcement Essentials

Division of Law Enforcement Services
2026 Crime Information Bureau Conference
September 10, 2026
Green Bay

Introduction



Presentation Overview

- Provide a brief background of DOJ's Office of Open Government.
- Explain what is a record and who can request records.
- Discuss the receipt & processing of public records requests.
- Outline how to respond to public records requests.
- Review some special issues and recent changes to the law.
- Address records retention.
- Offer the opportunity for questions.

Office of Open Government

- Interpret and apply the Open Meetings Law, Public Records Law, and other open government statutes and rules.
- Manage DOJ's public records request process.
- Develop open government policies.
- Provide legal counsel to DOJ and clients.
- Run the PROM help line and respond to citizen correspondence concerning open government issues.
 - Wis. Stat. §§ 19.39 and 19.98: Any person may request AG's advice.
- Provide training and open government resources.

Government Transparency

- “Transparency and oversight are essential to honest, ethical governance.” *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 32, 354 Wis. 2d 61, 848 N.W.2d 862.
- Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.
 - Sheds light on workings of government, acts of public officers and employees.
 - Assists members of the public in becoming an informed electorate.
 - Serves a basic tenet of our democratic system by providing for public oversight.

Presumption of Access

- Wis. Stat. § 19.31:
 - The public records law “shall be construed in every instance with a **presumption of complete public access**, consistent with the conduct of government business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”
- One of the strongest public policy statements in Wisconsin Statutes.

Public Records Roles



Authorities and Custodians

- **Authority:** Wis. Stat. § 19.32(1) - any of specified entities having custody of a record.
 - Public records law obligations apply separately to each authority.
 - The authority that receives a request must respond.
- **Legal Custodian:** Wis. Stat. § 19.33 - vested by an authority with full legal power to render decisions and carry out public records responsibilities.
 - E.g., elective official or designee.
 - Custodial services: other staff may assist.
 - All records belong to the authority.

Requesters

- Wis. Stat. § 19.32(3) - generally, any person who requests to inspect or copy a record.
 - Incarcerated or committed persons have more limited rights.
 - Requester has greater rights to inspect personally identifiable information about himself or herself in a record. Wis. Stat. § 19.35(1)(am).

Requesters, continued

- Requesters may be anonymous, and generally, need not identify themselves.
- Requesters need not state the purpose of their requests.
 - Motive generally not relevant, but context appropriately considered.
- *State ex rel. Ardell v. Milwaukee Board of School Directors*, 2014 WI App 66, 354 Wis. 2d 471, 849 N.W.2d 894: Safety concerns may be relevant, but it is a fact-intensive issue determined on a case-by-case basis in the balancing test.

Records



“Record” Defined

- “Any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.” Wis. Stat. § 19.32(2).



Is it a Record?

- Records **include** the following:
 - Material not created by authority but in authority's possession.
 - Audio and video recordings; data in a database.
 - Emails, texts & similar messaging, voicemails, and social media.
 - Virtual workplace chat content, channel discussions, and files.
- Records do **not** include:
 - Published material available for sale or at library.
 - Material with limited access rights, such as copyrights or patents.
 - Purely personal property.
 - Drafts, notes, and preliminary documents.

Drafts, Notes, Preliminary Documents

- Prepared for originator's **personal use** or in the name of a person for whom the originator is working.
- Not a draft if used for purpose for which it was commissioned.
- One cannot indefinitely qualify a document as a draft by simply labeling it “draft” or preventing final corrections from being made.



Audio and Video Recordings

- **Audio Recordings**
 - Voicemails; voice memos.
 - Recorded interviews.
 - 911 and dispatch audio recordings.
- **Video Recordings**
 - Surveillance video.
 - Police dashboard camera recordings.
 - Police body camera recordings.
 - Wis. Stat. § 165.87 includes provisions regarding retention, defining the custodian of such recordings, and possible exceptions to disclosure.

Emails, Texts, etc.: Authority's Account

- Personal email, texts, etc. on an authority's account:
 - Emails and texts sent and received on an authority's computer system are records.
 - Includes purely personal email sent by officers or employees of the authority.
- *Schill v. Wisconsin Rapids School District*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177.
 - Generally, disclosure not required of purely personal e-mails sent or received by employees that evince no violation of law or policy.

Emails, Texts, etc.: Personal Account

- Government business emails, texts, etc. on a personal account:
 - Emails and texts sent and received on a personal computer system that pertain to government business are records.
 - Content determines whether something is a “record,” not the medium, format, or location.
 - Personal materials on the same private accounts are not records subject to disclosure.

Receiving and Processing a Request



Receiving a Request

- A request may be submitted to anyone working for an authority.
 - May be verbal or in writing; “magic words” are not required.
 - An authority may not require the use of a form.
- To be a sufficient request, it must:
 - Reasonably describe the information or records requested.
 - Be reasonably specific as to time and subject matter.
- Custodian should not have to guess what records the requester wants.
- **Tip:** OOG encourages contacting the requester to clarify.

Communication with a Requester

- Don't understand the request? Contact the requester.
 - Send a written summary of your understanding and request clarification.
- Inform the requester if there is a large number of responsive records, or large estimated costs, and suggest or solicit alternatives.
 - A requester may not know how many records exist or may have no interest in many “technically” responsive records.
- Send the requester an acknowledgment and periodic status updates if the response will take some time.

Records Must Exist

- Generally, only **records that exist** at the time of the request must be produced.
 - To respond, an authority **need not create** new records.
- Public records law does **not require** answering questions.
- Continuing and forward-looking requests are not contemplated by the public records law.
- If there are no responsive records, inform the requester. See *Journal Times v. Police & Fire Com'rs Bd.*, 2015 WI 56, ¶ 102, 362 Wis. 2d 577, 866 N.W.2d 563.

Review Each Requested Record

- Each requested record must be reviewed to determine:
 - If all or part of the record is prohibited from disclosure pursuant to a **statute** or the **common law**.
 - If the **public records balancing test** weighs in favor of not disclosing all or part of the requested record.
 - Presumption that the records will be disclosed
- Must redact records or information exempt from disclosure.
 - This process can be time consuming for audio and video recordings, and it may be helpful to communicate this to the requester.

Absolute Right and Denial of Access

- **Absolute Right** (not many exist):
 - Books and papers “required to be kept” by sheriff, clerk of circuit court, and other specified county officials.
 - Daily arrest logs or police “blotters” at police departments.
- **Absolute Denial:**
 - Can be located in public records statutes, for example:
 - Information related to a current investigation of possible employee criminal conduct or misconduct.
 - Plans or specifications for state building.
 - Can be located in other statutes or case law, for example:
 - Patient health care records; pupil records.

The Balancing Test

- Weigh the **public interest in disclosure** of the record **against** the **public interest** and public policies **against disclosure**.
 - Consider public policies expressed in other statutes, court decisions, exemptions to open meeting requirements in Wis. Stat. § 19.85(1), evidentiary privileges, etc.
- Fact intensive; “blanket rules” disfavored.
- Must conduct on **case-by-case basis** taking into consideration the totality of circumstances.
- Identity of requester and purpose of request are generally **not** part of the balancing test.

Issues to Note



Prosecutor's Files

- A **prosecutor's files** are not subject to public inspection under the public records law. *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 433–34, 477 N.W.2d 608, 610 (1991).



Law Enforcement Records

- A **law enforcement agency's records** are subject to the regular public records process, including the balancing test.
- There is a strong public interest in investigating and prosecuting criminal activity.
- *Linzmeier v. Forcey*, 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811.
 - Public oversight of police investigations is important.
 - Police reports can be particularly sensitive.
 - Generally, law enforcement records more likely to have an adverse effect on public interests if released.

LE Records: Key Considerations

- Crime victims' rights expressed in statutes, constitutional provisions, and case law.
 - Includes family of crime victims.
 - **Marsy's Law:** Balancing test considerations.
 - [Office of Open Government Advisory: Marsy's Law and Public Records \(May 13, 2021\).](#)
- Protection of witnesses.
 - Safety and security; “chilling” future cooperation with law enforcement.

LE Records: Key Considerations, cont.

- Confidential Informants
 - Wis. Stat. § 19.36(8): Information identifying confidential informants must be withheld unless balancing test requires otherwise.
- Officer safety, including safety of their families and homes.



LE Records: Key Considerations, cont.

- Children and juveniles
 - Wis. Stat. §§ 48.396 and 938.396: Law enforcement records of children and juveniles who are the subjects of such investigations or other proceedings are confidential with some exceptions.
 - Access to other records regarding or mentioning children subject to general public records rules.
- **Tip:** If an authority has a record that it did not create, reach out to the originating authority regarding possible concerns.

LE Records: Questions to Ask

- Would the release endanger the safety of persons involved?
- Do the records discuss confidential law enforcement techniques and procedures?
- Is there a possibility of threats, harassment, or reprisals (against victims, witnesses, officers, others, etc.)?
 - Any such possibility is accorded appropriate weight depending on the likelihood, but generally, there must be a **reasonable probability**.
 - *See John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, 354 Wis. 2d 61, 848 N.W.2d 862.

Open Investigations and Prosecutions

- The public records law does **not** include a prohibition against the release of records regarding an ongoing investigation or prosecution.
 - Exception under § 19.36(10)(b):
 - Unless required by § 103.13, **prohibits** the disclosure of information related to the **current** investigation of possible crime or misconduct connected with employment by **employee**.

Open Investigations and Prosecutions, cont.

- Ongoing investigation/prosecution is a factor under the balancing test; considerations:
 - Impact on the ability to have a fair trial.
 - Influence on jury pool or judge.
 - Influence on potential witnesses and impact on the ability to determine veracity.
 - Availability of requested records prior to ongoing investigation/prosecution.
 - E.g., an individual's personnel file; Acadis records.
- **Tip:** A LE agency that receives a request related to an ongoing prosecution should contact the prosecutor regarding concerns.

Body Worn Cameras: Wis. Stat. § 165.87

- Generally, data from a body camera are records subject to disclosure.
- Statute establishes minimum retention of at least 120 days.
 - Exceptions require longer retention: encounters that result in death or actual or alleged injury; involve custodial arrest; involve a search during an authorized temporary question; or include use of force.
 - Other situations, such as court proceedings and Wis. Stat. § 19.35(5), may also require longer retention.

Body Worn Cameras: Public Policy

- Outlines the public policy weighing in favor of maintaining the privacy of certain record subjects, including:
 - Victims of sensitive or violent crimes; minors; and record subjects in a location where they have a reasonable expectation of privacy.
 - Faces and other identifiers must be redacted.
 - Unless they do not object or the public interest is so great that it outweighs the public policy weighing in favor of nondisclosure.

Body Worn Cameras: Disclosure

- For the purposes of public records requests, the law enforcement agency that created the body camera recording is the legal custodian. Wis. Stat. § 165.87(3)(d).
 - Other authorities possessing the recording must deny requests for it.
- Statute does not prohibit release of body camera data under Wis. Stat. § 175.47(5)(b) (release of reports related to reviews of officer-involved deaths).

Other Cameras

- Other camera recordings are not governed by the body worn camera statute.
 - Law enforcement dashboard camera recordings.
 - Security camera recordings (both of government and private premises).
 - Cell phone recordings.
 - Flock cameras.
 - Video, audio, and gunshot detection.
 - License plate readers: motion-activated cameras.

Election and Election Registration Officials

- **Wis. Stat. § 19.36(14)** (identities of election officials or election registration officials).
 - An authority shall not provide access to records containing the personally identifiable information of a current or former election official or election registration official if the official submits a written request.
 - Except the official's name and the city and state where the official resides.

Judicial Officers

- **Wis. Stat. § 19.36(15)** (privacy protection for judicial officers).
 - An authority shall not provide access to a certification of residence or the personal information of a judicial officer who submits a notarized written request to an authority's designated officer.
 - Home address is only confidential if directly associated or displayed with the judicial officer's name.
 - Request forms (blank or completed) are also prohibited from disclosure.
 - The fact that a form was submitted or received is not confidential.
 - See Wis. Stat. § 757.07.
- **Wis. Stat. § 19.36(16)** (judicial security profiles).
 - An authority shall not provide access to a judicial security profile form completed by or on behalf of a judicial officer and used to develop an emergency response plan.

Employee Records

- Wis. Stat. § 19.36(10): Treatment of employee personnel records.
 - Unless required by Wis. Stat. § 103.13, **prohibits** the disclosure of:
 - Employee's home address, email, phone number, SSN.
 - **Current** investigation of possible criminal offense or misconduct connected with employment.
 - Employee's employment examination, except the score.
 - Staff management planning, including performance evaluations, judgments, letters of reference, other comments or ratings relating to employees.
- Other personnel-related records, including disciplinary records, may be subject to disclosure.
 - Notice to employees is required in certain circumstances. See Wis. Stat. § 19.356.

Other Issues to Note

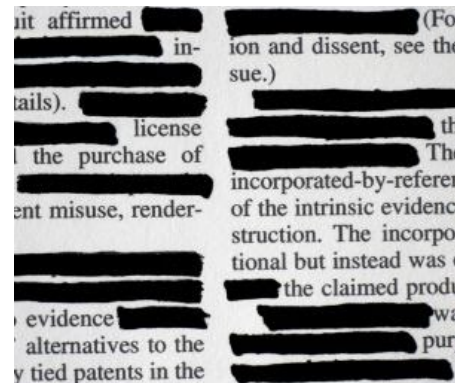
- Wis. Stat. § 905.03(2) and Common Law: Lawyer-Client Privileged Communications.
- Wis. Stat. § 804.01(2)(c)1 and Common Law: Attorney Work Product.
- Wis. Stat. § 165.79: Crime Laboratory Privilege.
- Driver's Privacy Protection Act (DPPA)
 - Information on the intersection of DPPA and the public records law is found in the Wisconsin Public Records Law Compliance Guide.
- Other statutes requiring confidentiality.

Redaction



Redaction

- Wis. Stat. § 19.36(6): If part of a record is disclosable, must disclose that part and redact non-disclosable portions.
- There is no single specific way to redact.
- Redaction constitutes a denial of access.
 - Therefore, subject to review by mandamus.



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Responding to a Request



Written Response

- A written request requires a written response, if the request is denied in whole or in part.
 - Reasons for denial must be specific and sufficient.
 - Purpose is to give adequate notice of reasons for denial and ensure that the custodian has exercised judgment.
- Reviewing court usually limited to reasons stated in denial.
- Availability of same records elsewhere generally not a sufficient reason.
 - An authority **must** respond to all requests it receives; an authority **cannot** simply direct a requester to another authority.
- Must inform the requestor that denial is subject to review in an enforcement action for mandamus under Wis. Stat. § 19.37(1) or by application to district attorney or Attorney General.

Timing of Response

- Response is required, “**as soon as practicable and without delay.**”
 - **No specific time limits**, depends on circumstances.
- DOJ policy: 10 business days generally reasonable for response to simple, narrow requests.
- Penalties for arbitrary and capricious delay.



Notice Before Release

- Notice to record subjects is only required in limited circumstances.
 - Required by Wis. Stat. § 19.356(2)(a)1:
 - Records containing information resulting from closed investigation into a disciplinary matter or possible employment-related violation of policy, rule, or statute.
 - Records obtained by subpoena or search warrant.
 - Records prepared by employer other than the authority about employees of that employer.
 - “Record subject” can try to prevent disclosure in court.
 - Required by Wis. Stat. § 19.356(9):
 - Officer or employee of the authority holding state or local public office.
 - “Record subject” may augment the record to be released.
- AG opinions regarding notice: [OAG-02-18 \(Feb. 23, 2018\)](#); [OAG-07-14 \(Oct. 15, 2014\)](#).
- Courtesy notice.

Permissible Fees



Costs

- **Actual, necessary, and direct** costs only — unless otherwise specified by law.
 - **Copying and reproduction.**
 - **Location**, if costs are \$50.00 or more.
 - Location costs themselves must be \$50 or more: An authority **cannot** combine location costs with other costs to reach the \$50 threshold.
 - **Mailing/shipping** to requester.
 - Others specified in Wis. Stat. § 19.35(3).
- Authorities **may not** charge for redaction costs, except as provided by Wis. Stat. § 19.35(3)(h).
- Prepayment may be required if total costs exceed \$5.00.
- Authority may waive all or part of costs.

Redaction Fees: Wis. Stat. § 19.35(3)(h)

- Generally, authorities may not charge for redaction.
- However, an authority that is a law enforcement agency may charge for the actual, necessary, and direct cost of redacting audio and video recordings.
 - Other authorities may not charge for redaction of audio and video recordings.
- The language of the statute raises questions regarding its administration that are best addressed by the legislature. [DOJ's Public Records Law Compliance Guide](#) offers some best practices that may be helpful.

Fees: Best Practices

- Keep the purpose of the public records law in mind when determining whether to impose fees.
- The provisions cannot be used to dissuade or discourage requesters from submitting requests.
- Authorities and requesters should maintain an open line of communication and work together to tailor requests to ensure requesters receive the desired records while reducing redaction costs.
- Public records law provides that authorities may waive fees.
- If you have questions, consult your legal counsel.

OOG Fee Advisory

- Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law (August 8, 2018).
 - Overview of costs permissible under the law.
 - Result of inquiries pertaining to high fees charged by some authorities:
 - Copy costs that are not actual, necessary and direct.
 - Location costs including time spent by specialists.
 - Limit amount of time spent by specialist.
 - Charge lowest hourly rate of staff **capable** of searching.
- DOJ's Public Records Request Fee Schedule (updated in June 2025).

Enforcement



Enforcement

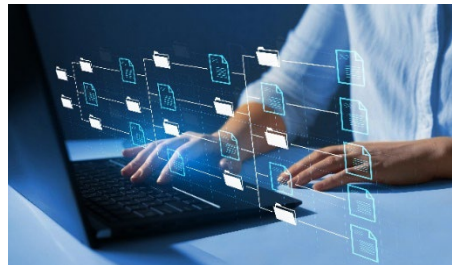
- Wis. Stat. § 19.37: Mandamus action to challenge withholding a record or part of a record or a delay in granting access.
 - Mandamus action may be filed by requester, DA, or AG.
 - Authority may be ordered to release records.
 - Other remedies.
- Wis. Stat. § 946.72: Tampering with public records and notices.
 - “Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class H felony.”

Records Retention



Records Retention: Public Records Law

- Wis. Stat. § 19.35(5): Governs retention following receipt of a request for a particular record:
 - No destruction until the request is granted or until at least 60 days after the authority denies the request.
 - 90 days if requester is committed or incarcerated.
 - No destruction during enforcement action.



Records Retention: Other Statutes

- Wis. Stat. § 16.61: State authorities.
- Wis. Stat. § 19.21: Local authorities.
 - Generally, a 7-year retention period for most records.
 - The Public Records Board (PRB) may set shorter retention periods.
- Other statutes.
 - For example, Wis. Stat. § 165.87(2) (body camera recordings).

Records Retention: Other Statutes, cont..

- General Records Schedules (GRSs)
 - State agencies must follow; may opt out and adopt corresponding RDAs within 12 months.
 - Local government units may opt in.
- Agency-specific Records Retention/Disposition Authorizations (RDAs).
 - Deviate from the GRSs to meet specific agency needs.
- Questions about records retention?
 - Consult your legal counsel.
 - Visit the PRB's website: <http://publicrecordsboard.gov>.

Questions?



Further Information

- Access DOJ Compliance Guides and other resources on the [Office of Open Government](#) portion of DOJ's website.
- Contact the Office of Open Government:
 - Main Telephone: (608) 267-2220
 - OOG Email: opengov@wisdoj.gov
 - Paul Ferguson: (608) 264-9464
Paul.Ferguson@wisdoj.gov





Thank you!