



Wisconsin Department of Justice Office of Open Government



Wisconsin Department of Justice

Technology and the Public Records Law

Wisconsin State Bar

2026 Public Records-Open Meetings Update

September 2, 2026

Introduction



Presentation Overview

- Brief background on DOJ's Office of Open Government.
- Basics of the Public Records Law.
- Timeline of the Public Records Law and certain technology.
- Ways the public records law has adapted to, or been applied to, new technologies.
- Challenges that new forms of technology pose when applying the public records law.

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

The Public Records Law



Public Records Law Basics

- The **Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39**, authorizes requesters to inspect or obtain copies of “records” created or maintained by an “authority.”
- Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31.
- Statutes, case law, and the public records law balancing test provide such exceptions, which must be narrowly construed to effectuate the law’s purpose.

Records

- “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).
- Records include paper and electronic records, including audio and video recordings, data in a database, emails, text messages, voicemails, social media content, and virtual workplace content.
- Records do not include published material available for sale or at a library, material with limited access rights, such as copyrights or patents, purely personal property, drafts, notes, and preliminary documents.

Request, Review, and Redaction

- Generally, a requester is any person who requests to inspect or copy a record. Wis. Stat. § 19.32(3).
 - Requesters may be anonymous and do not need to state the purpose of their requests.
- A custodian must search for records and review them to determine if all or part of the records cannot be disclosed.
- If a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record and disclose the rest. See Wis. Stat. § 19.36(6).

Response, Fees, and Timing

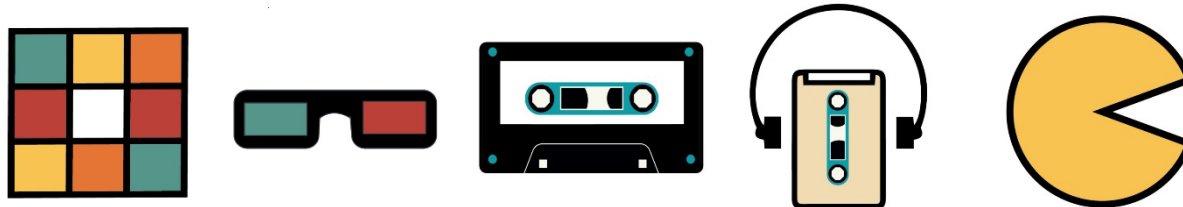
- A written request requires a written response if the request is denied in whole or in part.
 - Must provide specific and sufficient reasons for the denial.
- An authority may charge for the actual, necessary, and costs associated with processing a request only in limited areas.
- A response is required “as soon as practicable and without delay.”
 - No specific time limits; depends on circumstances.

Over Four Decades of Technology



1983

- The act creating Wis. Stat. §§ 19.31 to 19.39 went into effect.
- Landline telephones.
- Copy machines common, but mimeographs still in use.
- Microsoft Word released.
- *Time* magazine (January 3, 1983): 1982 “Man of the Year” awarded to the personal computer as “Machine of the Year.”



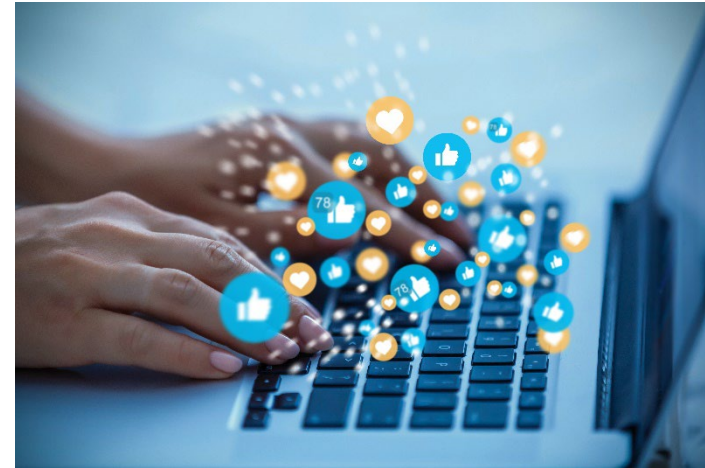
Technology of Today Timeline, Part I

- Emails
 - 1971: First email sent
 - 1980s & 1990s: Increasing use in business and government
 - Mid-1990s: Public use began in earnest
- Text Messages
 - 1992: First text message sent
 - 1999: Text messaging across cell phone carriers
 - 2009: WhatsApp



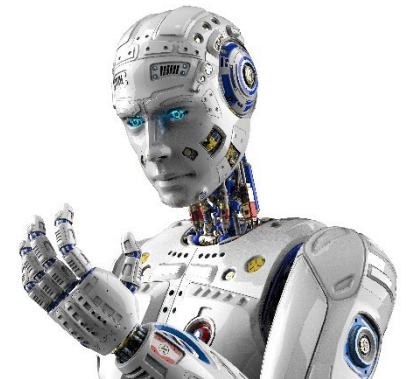
Technology of Today Timeline, Part II

- Social Media
 - 2003: Myspace
 - 2004: Facebook
 - 2006: Twitter (now X)
 - 2010: Instagram
- Virtual workplace platforms
 - 2013: Zoom officially launched to the public
 - 2017: Microsoft Teams



Technology of Today Timeline, Part III

- Police Body Worn Cameras
 - 2005: First used anywhere (United Kingdom)
 - 2012: First used in the United States
- Artificial Intelligence (AI)
 - 2020: Public release of large language models
 - 2022-Present: Release of various generative AI chatbots (e.g., ChatGPT, Gemini, Claude)



The Public Records Law Applied to the Technology of Today



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.

Social Media

- Government business-related content posted by, or on behalf of, authorities to social media is a record.
 - Includes content posted by third parties, such as public comments.
 - Includes both “live” and past content, all of which is also subject to records retention requirements.
- Authorities who use social media should adopt procedures to retain and preserve all such records pursuant to the applicable records retention schedule.

Electronic Databases

- Data are records.
- Computer program is not subject to examination or copying; however, computer program input and output material (the product of a computer program) is. Wis. Stat. § 19.36(4).
- With limited exceptions, custodian is not required to create a new record by extracting information from an existing record & compiling it in a new format. Wis. Stat. § 19.35(1)(L)
- But, a requester, “within reasonable limits,” may request a data run to obtain requested information. 477 68 Op. Att’y Gen. 231, 232 (1979).

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.

Artificial Intelligence (AI)

- Increasing use of AI, including the likely use in submission of public records requests (PRRs).
- DOJ has not issued formal guidance on the intersection of AI and the public records law.
- Some issues presented by AI:
 - Automated PRRs submitted at a rate faster than human staff can respond.
 - Some requests are difficult to understand and communication with the requester (such as to clarify a PRR) is challenging without a human point of contact.

Other Considerations



Locating Electronic Records

- While the use of electronic records helps with overall efficiency, searching for electronic records is often time-consuming.
- Location costs (\$50.00 or more) are one of few permissible fees.
- May only assess actual, necessary, and direct costs of locating.
- Cannot combine location and other costs to reach \$50 threshold.
- Authorities should charge the lowest hourly rate of the individual capable of searching.
- Authorities may not charge for redaction costs, except as provided by Wis. Stat. § 19.35(3)(h).

Redaction

- There is no single specific way to redact.
- Software is available that provides redaction capabilities for audio and video recordings.
- Audio and video redaction can take many working hours.
 - For example, a one-hour recording takes longer than one hour to review and redact.
- Audio and video content can be voluminous for certain records (such as law enforcement investigation records).

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.

Records Retention

- Records retention is governed by:
 - Wis. Stat. § 19.35(5): Governs records retention following the receipt of a public records request.
 - Wis. Stat. § 16.61: State authorities
 - Wis. Stat. § 19.21: Local authorities
 - General Records Schedules (GRSs) and agency-specific Records Retention/Disposition Authorizations (RDAs).

Records Retention: Concerns

- Expense of retaining electronic records.
 - Certain electronic records consist of large file sizes that must be retained for long periods of time.
- Ensuring records are accessible for the duration of their retention period.
 - More challenging for dated technology.



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
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Thank you!