

Wisconsin Department of Justice Office of Open Government



Public Records Law Presentation

Wisconsin Technical College System Purchasing Consortium

May 12, 2026



Office of Open Government (OOG)

- 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. Maclver 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
- **Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98**
 - The purpose of the open meetings law is to ensure openness
 - Only a few limited exemptions permit confidentiality
 - The open meetings law is to be broadly interpreted to promote openness



Presumption

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.”

— Wis. Stat. § 19.31



PUBLIC RECORDS ROLES



Authorities and Custodians

- **Authority:** Wis. Stat. § 19.32(1) - any of specified entities having custody of a record
 - 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 (even if another authority would actually have the record)
- **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 of elective official
 - 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 generally **need not identify** themselves and may remain anonymous
 - However, public records requests are records subject to disclosure
- 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.
- **The Public Records Law does not address issues regarding Artificial Intelligence (AI) and requests.**

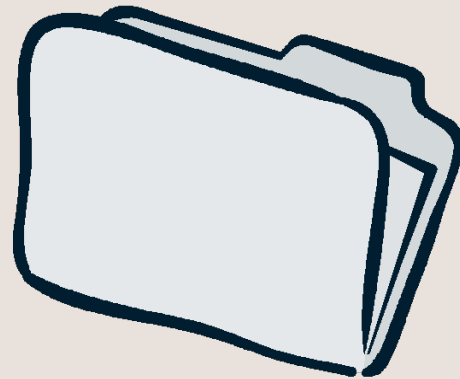


RECORDS



“Record” Defined

- Wis. Stat. § 19.32(2):
 - “**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.”



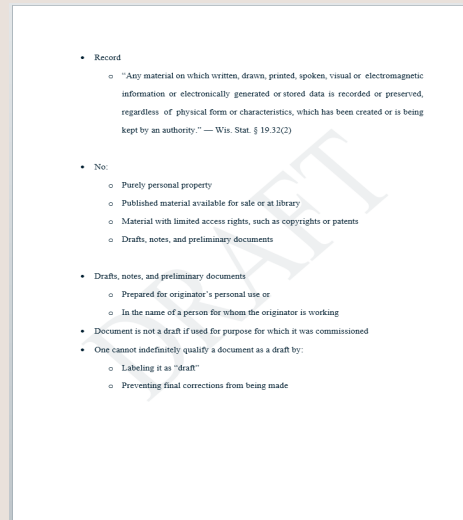
Is it a Record?

- Records **include** the following:
 - **Material not created by the authority but in the authority's possession**
 - Electronic records, including audio and video
 - Data in a database
 - Emails, texts, voicemails, and social media
 - Virtual workplace chat content, channel discussions, and files
- Records **do not include** the following:
 - 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
- This exclusion **must be narrowly construed**. The records custodian bears the burden of proof that a document is a “draft,” a “note,” or a “preliminary document.”



Electronic Records: Email, Texts, etc.

- **Personal** email, texts, calls, and documents on an **authority's account**:
 - Email sent and received on an authority's computer system is a record
 - 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.
- **Government business** emails, texts, calls, and documents on **personal accounts**:
 - These materials may be “records”
 - Content determines whether something is a “record,” not the medium, format, or location
 - Personal materials on the same private accounts are not subject to disclosure
 - **DOJ Recommendation**: Conduct a careful search of **all** relevant accounts



RECEIVING AND PROCESSING A REQUEST



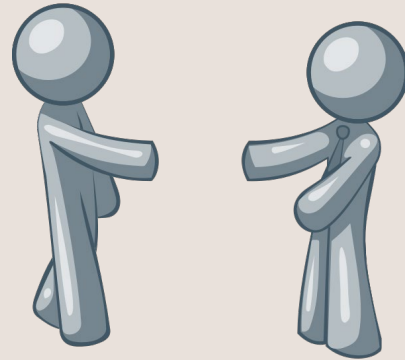
Receiving a Request

- A request may be submitted to anyone working for an authority
 - A request may be **verbal** or **in writing**
 - An authority may **not** require the use of a form
 - “Magic words” are not required
- To be **sufficient**, a request 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:** It is okay to contact the requester to clarify. DOJ encourages communication with requesters!



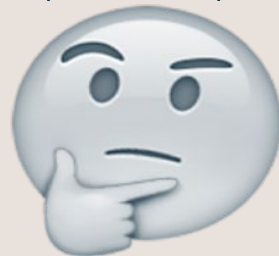
Communication with a Requester

- Don't understand the request? Contact the requester
- Inform the requester if there is a large number of responsive records, or large estimated costs, and suggest or solicit alternatives.
 - **Caution:** it is important not to discourage a requester from exercising their rights under the Public Records Law.
- 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
 - However, if a request asks a question and an existing record answers the question, it is best to provide the record or inform the requester
- Continuing requests are not contemplated by the public records law. A requester would need to submit new requests for later-arising records (those created after the date of the request).
- **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 the following:
 - Whether all or part of the requested record is prohibited from disclosure pursuant to a **statute** or the **common law (court decisions)**
 - Whether the **public records balancing test** weighs in favor of not disclosing all or part of the requested record
 - **Remember: the presumption is that the records will be disclosed**
- Records or information exempt from disclosure must be redacted; the rest should be produced
- This process can be time consuming for audio and video recordings
 - It may be helpful to communicate this to the requester



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 in court proceedings, etc.
- Must conduct on **case-by-case basis** taking into consideration the totality of circumstances. The test is fact-specific and disfavors “blanket rules.”
- Identity of requester and purpose of request are generally not part of the balancing test



ISSUES TO NOTE



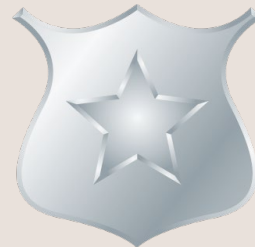
Employee Records

- Wis. Stat. § 19.36(10): Treatment of employee personnel records
 - Unless required by Wis. Stat. § 103.13, **prohibits** the disclosure of information related to:
 - 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, **are** subject to disclosure
 - Notice to employees is required in certain circumstances. See Wis. Stat. § 19.356.



Prosecutor's Files v. Law Enforcement Records

- 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).
- However, for **law enforcement agency's records**, the regular public records process, including application of the balancing test on a case-by-case basis, must be followed.
 - 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 investigation reports can be particularly sensitive
 - Generally, law enforcement records more likely to have an adverse effect on public interests if released
 - If this group is interested in learning more about law enforcement records and the public records law, please ask questions!



Ongoing Investigations and Prosecutions

- The public records law does **not** include a prohibition against the release of records regarding an ongoing investigation or prosecution.
 - **But:** 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**.



Other Issues to Note

- Stat. § 905.03(2) and Common Law: Lawyer-Client Privileged Communications
- Wis. Stat. § 804.01(2)(c)1 and Common Law: Attorney Work Product
- 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
- Body camera recordings - **Wis. Stat. § 165.87(3)**



Other Issues, continued: Protections for Election Officials and Judicial Officers

- **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 that an authority may provide access to the official's name and the city and state where the official resides
- **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 to receive such requests.
 - But: home address is only confidential if directly associated/displayed with the judicial officer's name
 - Request forms are prohibited from disclosure, too.
 - But: the fact that a form was submitted or received is **not** confidential.
- **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.



REDACTION



Redaction

- Wis. Stat. § 19.36(6): If part of a record is disclosable, **must** disclose that part and redact non-disclosable portions.
- What to redact? Determined by the balancing test, statutes, common law ... in other words, refer to the above discussion.
- No specific way to redact: electronic redaction, black magic marker, cover up with white paper when photocopying → all would be permissible.
- **Redaction constitutes a denial of access to the redacted information**
 - Therefore, subject to review by mandamus. Inform the requester of their right to seek judicial review.

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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 the same records from other sources generally not a sufficient reason**
 - **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
- May respond in writing to a verbal request
- A request for clarification, without more, is not a denial



Format of Records

- *Lueders v. Krug*, 2019 WI App 36, 388 Wis. 2d 147, 931 N.W.2d 898
 - Emails requested in electronic format, where no redactions were applied, **must** be provided in electronic format
 - Printed copies of requested records were not sufficient because they do not include metadata (data about data)
 - Because emails were requested in electronic format, associated metadata was also requested
- *Wiredata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736
 - PDF fulfilled request for “electronic records” despite not having all the characteristics wanted by the requester



Timing of Response

- Response is required, “**as soon as practicable and without delay**”
 - **No specific time limits**, depends on circumstances (e.g., staff availability, number of other records requests)
- DOJ policy: 10 business days generally reasonable for response to simple, narrow requests.
 - Tip: acknowledge receipt of the request and inform requester if response will take some time.
- Penalties for arbitrary and capricious delay can be imposed by reviewing courts



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
- Attorney General opinions regarding notice: OAG-02-18 (Feb. 23, 2018); OAG-07-14 (Oct. 15, 2014)



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 is not reading, reviewing, etc.
 - 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) (an authority that is a law enforcement agency may charge for redactions made to requested audio/video materials)
 - This law passed in 2024 and has some conditions on when fees may not be charged. Best to refer to the statute itself.
- Prepayment may be required if total costs exceed \$5.00
- **Authority may waive all or part of costs.**
- **Recommendation:** Keep careful records of time spent working on requests! Be able to prove up the costs that are charged.



OOG Fee Advisory

- Office of Open Government Advisory: Charging Fees under the Wisconsin Public Records Law (August 8, 2018)
 - Available at https://www.wisdoj.gov/Documents/8.8.18_OOG_Advisory_Fees_0.pdf
 - 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 individual **capable** of searching
- DOJ's fee schedule (updated in June 2025) is available at <https://www.wisdoj.gov/Open%20Government/Public%20Records%20Request%20Fee%20Schedule%20June%202025.pdf>



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, with or without attorney
 - District attorney
 - Attorney General
 - 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 under the Public Records Law

- Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39
 - **Wis. Stat. § 19.35(5):** Governs retention **following receipt of a request:**
 - 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



Other Records Retention 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
- **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 or check with Public Records Board!
 - Visit the PRB's website: <http://publicrecordsboard.gov>



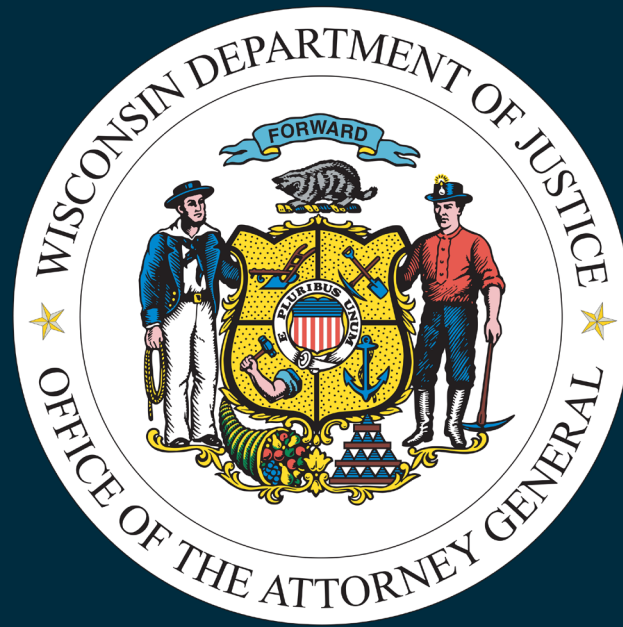
QUESTIONS ABOUT THE PUBLIC RECORDS LAW?



Further Information

- Download **DOJ Compliance Guides** and other resources at <https://www.wisdoj.gov/Pages/AboutUs/office-of-open-government.aspx>
- Contact the Office of Open Government:
 - Location: AG's Capitol Office, 114 East
 - Main Tel: (608) 267-2220
 - OOG Email: opengov@wisdoj.gov
 - Paul Ferguson: (608) 264-9464
Paul.Ferguson@wisdoj.gov
 - Lili Behm: (608) 266-1447 or (608) 896-3490
Lili.Behm@wisdoj.gov





Thank You!

