STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

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

Thomas C. Bellavia
Assistant Attorney General
608/266-8690
bellaviatc@doj.state.wi.us
FAX 608/267-2223

June 17, 2009

Mr. Rick deMoya
Post Office Box 620288
Middleton, WI 53562

Dear Mr. deMoya:

I have been asked to respond to your May 14, 2009, email to Assistant Attorney General Jennifer Lattis, in which you request guidance about the requirements of Wisconsin's open meetings and public records laws for preparing minutes of a closed session meeting of a governmental body. More specifically, you ask whether governmental bodies "must publish minutes from closed hearing sessions and what the breadth of those minutes must state."

Your inquiry involves several component questions. The first question is whether governmental bodies are required to prepare minutes of closed session meetings. Under section 19.88(3) of the Wisconsin Statutes, a governmental body is required to create and preserve a record of all motions and roll call votes at its meetings. That requirement applies to both open and closed sessions. Written minutes are the most common method that bodies use to comply with this requirement, but it can also be satisfied if the motions and roll-call votes are recorded and preserved on a tape recording. As long as the body creates and preserves a record of all motions and roll call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. *See, e.g.*, secs. 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 59.23(2)(a) (county clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb), Wis. Stats. (board of review).

The second question is what information must be included in a record of a closed session. Under section 19.88(3), the record of every motion and roll call vote—whether open or closed—should show the motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll call vote, how each member voted. Although the statute does not indicate how detailed the description of a motion must be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Sec. 19.81(1), Wis. Stats. In light of that policy, it seems clear that a governmental body's

records should provide the public with a reasonably intelligible description of the essential substantive elements of every action or determination made by the body on any item of business.

The third question is whether records of a closed session must be published. Section 19.88(3) provides that meeting records created under that statute—whether for an open or a closed session—must be open to public inspection to the extent prescribed in the state public records law. Because the records law contains no general exemption for records created during a closed session, a custodian must release such items unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release would outweigh the benefit to the public. There is a strong presumption under the public records law that release of records is in the public interest. As long as the reasons for convening in closed session continue to exist, however, the custodian may be able to justify not disclosing any information that requires confidentiality. But the custodian still must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them. *See* 67 Op. Att'y Gen. 117, 119 (1978).

Finally, I note that your email appears to be directed at the requirements applicable to "state agencies." The open meetings statutes, including section 19.88(3) discussed above, apply only to a "governmental body" as defined in section 19.82(1). That definition generally includes only multi-member bodies that have a definable membership and are authorized, pursuant to law, to collectively exercise power or provide advice as a body through some mechanism of collective decision-making. It does not include groups of individuals who are public officers or employees but who operate only as administrative staff of a government agency and are not authorized to act as a discrete collective body. Accordingly, meetings of members of the administrative staff of a state agency generally are not subject to the open meetings law, unless those staff members have been delegated authority to act as a collective body in relation to some matters of government business.

I hope that this information is helpful to you and thank you for your interest in compliance with the open meetings law. Please note that the opinions expressed in this letter do not constitute a formal opinion of the Attorney General or the Department of Justice pursuant to section 165.015(2). I have also been instructed to ask you to please submit any future correspondence via regular mail, rather than email.

Sincerely,

Thomas C. Bellavia

Thomas C. Bellavia
Assistant Attorney General

TCB:rk

bellaviatc\open meetings\cor\de moya\de moya resp lt 06-17-09.doc
090515005