

## 2020 3rd Quarter Correspondence

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**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

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July 16, 2020

Rebecca Evert  
Sauk County Clerk  
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becky.evert@saukcountywi.us

Dear Ms. Evert:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 10, 2020, in which you wrote, “the Executive and Legislative Committee (E&L) violated the open meetings law by taking action on an item not specifically itemized on the agenda. . . . The information in the agenda was not sufficient to alert the public that anything would occur in open session following the closed session.”

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).

The open meetings law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

The open meetings law also provides for the timing for releasing agendas, as well as the level of specificity required in agenda items for open meetings, in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id.* Furthermore,

the law requires separate public notice for each meeting of a governmental body at a time and date “reasonably proximate to the time and date of the meeting.” Wis. Stat. § 19.84(4).

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

Whether the notice is specific enough is determined on a case-specific basis, based on a reasonableness standard. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 27–29, 301 Wis. 2d 178, 732 N.W.2d 804. This includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Id.* ¶ 28. There may be less need for specificity where a meeting subject occurs frequently, because members of the public are more likely to anticipate that the meeting subject will be addressed, but novel issues may require more specific notice. *Id.* ¶ 31.

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that “adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified.” *Buswell*, 2007 WI 71, ¶ 37 n.7. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* See also Herbst Correspondence (July 16, 2008).

A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice. *Buswell*, 2007 WI 71, ¶ 34. There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. Stencil Correspondence (Mar. 6, 2008). Nor is a governmental body required to actually discuss every item contained in the public notice. It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. Black Correspondence (Apr. 22, 2009); Krueger Correspondence (Feb. 13, 2019).

Moreover, although the open meetings law governs public access to and notice of meetings of governmental bodies, it does not dictate all procedural aspects of how bodies run meetings. For example, the open meetings law does not specify requirements for the process that governmental bodies use to adopt meeting agendas. So long as governmental bodies follow the requirements for adequate and timely notice to the public, the notice complies with the open meetings law.

Regarding closed sessions, every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

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. For example, Wis. Stat. § 19.85(1)(c) provides an exemption for the following: “Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.” 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.

A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within 12 hours after completion of a closed session, unless public notice of the subsequent open session is given “at the same time and in the same manner” as the public notice of the prior open session. Wis. Stat. § 19.85(2). The notice need not specify the time the governmental body expects to reconvene in open session if the body plans to reconvene immediately following the closed session. If the notice does specify the time, the body must wait until that time to reconvene in open session. When a governmental body reconvenes in open session following a closed session, the presiding officer has a duty to open the door of the meeting room and inform any members of the public that the session is open. Claybaugh Correspondence (Feb. 16, 2006).

Turning now to the specific concerns set forth in your correspondence, I first want to reiterate that, as noted above, the open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *Olson*, 252 Wis. 2d 628, ¶ 15. In some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *See Herbst Correspondence* (July 16, 2008). Whether the notice is specific enough, however, is a fact-specific determination made on a case-specific basis, based on a reasonableness standard. *Buswell*, 301 Wis. 2d 178, ¶¶ 27–29. Based on the information you provided, DOJ does not have sufficient information to fully analyze the issue, but I note that the agenda here did indicate that the body would “[r]econvene in open session following the closed session.” Therefore, the public had notice that an open session would follow the closed session.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). Generally, the Attorney General may elect to prosecute complaints 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 pursue an enforcement action at this time.

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 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).

Under the open meetings law, the district attorney cannot act to enforce the law unless he or she receives a verified complaint. Therefore, to ensure the district attorney has the authority to enforce the law, you must file a verified complaint. This also ensures that you have the option to file suit should the district attorney refuse or otherwise fail to commence an enforcement action, as explained in the previous paragraph. For further information, please see pages 30-31 of the Open Meetings Law Compliance Guide and Wis. Stat. § 19.97. Appendix B of the Open Meetings Law Compliance Guide provides a template for a verified open meetings law complaint.

Additionally, 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.

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a stylized "L" at the end.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 9, 2020

Bob Chernow

[REDACTED]  
Grafton, WI 53024

Dear Mr. Chernow:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 13, 2019, regarding your public records request to Speaker Robin Vos “to review the redistricting of Senate District #8.” You received a response that said, “We have no records responsive to your request.” You asked the following questions: (1) “Would not Mr. Vos still have possession of this information?”; (2) “Were these records destroyed?”; and (3) “Are taxpayer funded projects that affect citizen’s representation not public?” Lastly, you asked “the Office of Open Government to get [you] a satisfactory answer to this strange response to [your] open records request.”

The Attorney General and DOJ’s Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this 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. The OOG is only authorized to provide assistance within this scope. Therefore, we are unable to offer you any assistance regarding your first two questions. We can, however, provide you with some information about the public records law that we hope you will find helpful.

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 law defines a “record” as 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). A record includes handwritten, typed, or printed documents; maps and charts; photographs, films, and tape recordings; tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved; and electronic records and communications.

Whether material is a “record” subject to disclosure under the public records law depends on whether the record is created or kept in connection with the official purpose or function of the agency. *See* OAG I-06-09, at 2 (Dec. 23, 2009). Not everything a public official or employee creates is a public record. The substance or content, not the medium, format, or location, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470 (1965).

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).

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 (citation omitted); *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.

Additionally, 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).

Records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. The public records law only addresses how long an authority must keep its records once an authority receives a public records request. Although the public records law addresses the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). When a requester submits a public records request, the authority is obligated to preserve the requested records until after the request is granted or until at least 60 days after the request is denied (90 days if the requester is a committed or incarcerated person). Other retention periods apply if an authority receives written notice that the requester has commenced a mandamus action (an action to enforce the public records law).



Other than this, the public records law does not address how long an authority must keep its records, and the public records law cannot be used to address an authority's alleged failure to retain records required to be kept under other laws. Instead, record retention is governed by other statutes. Wisconsin Stat. § 16.61 addresses the retention of records for state agencies, and Wis. Stat. § 19.21 deals with record retention for local government entities. The general statutory requirements for record retention apply equally to electronic records. Most often, record retention schedules, created in accordance with these statutes, govern how long an authority must keep its records and what it must do with them after the retention period ends. The Wisconsin Public Records Board's website, <http://publicrecordsboard.wi.gov/>, has additional information on record retention.

As noted above, the OOG is only authorized to provide you with advice within the scope of its statutory authority and responsibilities. Therefore, we are unable to offer you any further assistance regarding the record retention requirements under Wis. Stat. §§ 16.61 and 19.21 or any pertinent record retention schedules created pursuant to those statutes. As noted above, you may wish to visit the Wisconsin Public Records Board website at <http://publicrecordsboard.wi.gov/> for more information on record retention.

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). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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, he generally 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.

Additionally, 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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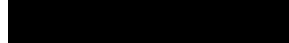
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September 9, 2020

Randall D'Addezio



Kaukauna, WI 54130  
Rdaddezio07@yahoo.com

Dear Mr. D'Addezio:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 19, 2019, regarding your public records requests to your "local police department." You wrote, "they also stated that I don't have any rights to inspect said documents" and your "other open records request have also been denied." You requested "[s]uch items as police department maintenance logs Vehicle maintenance logs equipment List- Government supplied communications such as cell phones emails notes also requested list of salaries benefits with names redacted." You wrote, "They refuse to be transparent with me and I would appreciate it if I could get some help."

DOJ has insufficient information to evaluate the denials of your public records requests. However, we can provide you with some general information regarding the public records law that we hope you will find helpful.

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).

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Whether material is a “record” subject to disclosure under the public records law depends on whether the record is created or kept in connection with the official purpose or function of the agency. *See* OAG I-06-09, at 2 (Dec. 23, 2009). Not everything a public official or employee creates is a public record. The substance or content, not the medium, format, or location, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470 (1965).

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If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for denying the written request. Wis. Stat. § 19.35(4)(b). 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).

Under the public record law, a requester generally may choose to inspect a record and/or to obtain a copy of the record. As stated in Wis. Stat. § 19.35(1)(b), “Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record. If a requester appears personally to request a copy of a record that permits copying, the authority having custody of the record may, at its option, permit the requester to copy the record or provide the requester with a copy substantially as readable as the original.” Wis. Stat. § 19.35(1)(b). A requester must be provided facilities for inspection and

copying of requested records comparable to those used by the authority's employees. Wis. Stat. § 19.35(2). A records custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged. Wis. Stat. § 19.35(1)(k).

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). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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, he generally 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.

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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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL: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](http://www.doj.state.wi.us)

**Sarah K. Larson**  
Assistant Attorney General  
[larsonsk@doj.state.wi.us](mailto:larsonsk@doj.state.wi.us)  
608/266-1221  
TTY 1-800-947-3529  
FAX 608/267-2779

September 9, 2020

Brittany Daniels

[REDACTED]  
Long Lake, WI 54542  
[makellgreatagain@gmail.com](mailto:makellgreatagain@gmail.com)

Dear Ms. Daniels:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 11, 2019, regarding “town board meeting postings.” You wrote, “meeting posting needs to be up for 15 days for it to be legal. This does not include legal holidays (like Veterans days), but does it include Sundays also?” You stated you were “always told to not count Sunday as a posting day.”

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 public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).

In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body. However, those statutes fall outside of the scope of the authority and responsibilities of DOJ’s Office of Open Government (OOG) under the Wisconsin Open Meetings Law. Although we are unable to offer you assistance regarding other statutes that are outside the scope of the OOG’s responsibilities, we can offer you some general information about the open meetings law that we hope you will find helpful.

Under the open meetings law, public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat.

§ 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. Wis. Stat. § 19.84(3). Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date “reasonably proximate to the time and date of the meeting.” Wis. Stat. § 19.84(4).

When calculating the twenty-four hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is, therefore, inadequate, but posting such notice on the preceding Saturday would suffice, as long as the posting location is open to the public on Saturdays. Caylor Correspondence (Dec. 6, 2007).

Public notice of a meeting must provide the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session.” Wis. Stat. § 19.84(2). The notice must be in such a form so as to reasonably apprise the public of this information. *Id.* For additional information on the notice requirements of the open meetings law, please see DOJ’s Open Meetings Law Compliance Guide available through DOJ’s website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

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. 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.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

Thank you for your correspondence. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals’ open government questions. The PROM telephone number is (608) 267-2220.

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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah





**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 11, 2020

The Ladd Family  
[annladder@yahoo.com](mailto:annladder@yahoo.com)

Dear Ladd Family:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 17, 2019 and January 2, 2020, regarding an “expunged picture and other documents that are on [William Bastone’s] website, [thesmokinggun.com](http://thesmokinggun.com).” You wrote, “His website actually claims copyright when he does not have the copyright.” You stated, “In 2006 you were a regulating agency in this expunged and destroyed image in question. . . . Can’t the copies on Bastone’s copyrighting website be returned to the proper entity (courts or to us)?”

The Attorney General and DOJ’s Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this 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. The OOG is only authorized to provide assistance within this scope. As a result, we are unable to offer you assistance or insight regarding “the expunged picture and other documents” referenced in your correspondence. I also note that the DOJ has indicated in previous correspondence to your family, dated June 15, 2015 and June 29, 2015, that DOJ was unable to assist you with this same matter. You may wish to contact your local police department, sheriff’s office, or district attorney regarding this matter.

You may also 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/inneedalawyer/pages/lris.aspx>

If you would like to learn about the public records law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

---

**Josh Kaul**  
Attorney General

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**Sarah K. Larson**  
Assistant Attorney General  
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TTY 1-800-947-3529  
FAX 608/267-2779

September 11, 2020

**Brian Marcello**

[REDACTED]  
Fond du Lac, WI 54935  
karmaschild@outlook.com

Dear Mr. Marcello:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 12, 2019, in which you wrote, "A top State employee admitted to me that he uses a private email account to conduct state based business. This is I believe illegal as we are public servants and all business is subject to open records laws and anything on a private email is therefore hidden from the public. All emails go into a vault for possible public disclosure but private emails circumvent this. I also have proof that the state has illegally removed public emails from this public repository. What should I do?"

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your concerns. DOJ cannot offer you legal advice or counsel concerning this matter as DOJ may be called upon to represent Wisconsin state agencies. We also have insufficient information from you to evaluate the matter fully. While we cannot offer you legal advice or counsel, we can provide you with some general information regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, that we hope you will find helpful.

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).

Nothing in the public records law prohibits a government employee from using a personal email account to conduct official government business but doing so may result in the creation of a "record" that is subject to disclosure under the public records law. Additionally, government business-related records found on personal email accounts are also subject to record retention requirements. Government employees should contact their agency's legal counsel with any questions regarding such requirements.

The public records law defines a “record” as 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). A record includes handwritten, typed, or printed documents; maps and charts; photographs, films, and tape recordings; tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved; and electronic records and communications.

Whether material is a “record” subject to disclosure under the public records law depends on whether the record is created or kept in connection with the official purpose or function of the agency. *See* OAG I-06-09, at 2 (Dec. 23, 2009). Not everything a public official or employee creates is a public record. The substance or content, not the medium, format or location, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470 (1965).

Generally, electronically stored information constitutes a “record” within the meaning of the public records law so long as the recorded information is created or kept in connection with official business. *See* Wis. Stat. § 19.32(2); *Youmans*, 28 Wis. 2d at 679. For example, emails and other records created or maintained on a personal computer or mobile device, or from a personal email account, constitute records if they relate to government business. Other examples of electronic records within the Wis. Stat. § 19.32(2) definition can include database files, email correspondence, web-based information, PowerPoint presentations, audio and video recordings, and social media content created or kept by an authority.

The fact that a record is subject to disclosure under the public records law, however, does not necessarily mean an authority must disclose the record. While records are presumed to be open to public inspection and copying, 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. Wis. Stat. § 19.35(4)(b).

Records retention is a subject that is generally related to, but different from, the access requirements imposed by the public records law. The general statutory requirements for record retention by state agencies, Wis. Stat. § 16.61, and local units of government, Wis. Stat. § 19.21, apply equally to electronic records. Although the public records law addresses

the duty to *disclose* records, it is not a means of enforcing the duty to *retain* records, except for the period after a request for particular records is submitted. *See State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 15 n.4 (citing Wis. Stat. § 19.35(5)) (citation omitted). The duty to retain records is governed by the records retention statutes and record retention schedules created pursuant to those statutes. For more information on record retention, you may wish to visit the Wisconsin Public Records Board website at <http://publicrecordsboard.wi.gov/>.

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.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

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P.O. Box 7857  
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Paul M. Ferguson  
Assistant Attorney General  
fergusonpm@doj.state.wi.us  
(608) 266-1221  
TTY 1-800-947-3529  
FAX (608) 266-2779

September 18, 2020

Judy Haddad

[REDACTED]  
Lindenhurst, IL 60046  
judy@5purpleoranges.org

Dear Ms. Haddad:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence dated November 21, 2019 and December 6, 2019, regarding your public records request to the “Dodge County Sherriff’s Office [for] the resignation letters [of] Deputy Brian Severson, Detective Ted Sullivan and Sgt. Dennis Walston from a special unit--the Crash Investigation Team in August of 2018.” You wrote, “Twice I have been turned down due to worries about morale and personnel. Two of the members of the team are no longer with the sheriff’s office, and so I don’t believe they have any standing.” You asked, “Please let me know how I can get access to those records.”

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).

Generally, personnel-related records, including disciplinary records, are subject to disclosure under the public records law. Wisconsin Stat. § 19.36(10) addresses the treatment of certain employee personnel records and provides that certain such records cannot be disclosed. However, like all exceptions to disclosure under the public records law, these must be construed narrowly.

The correspondence you sent to DOJ did not include a copy of the response that you received from the Dodge County Sheriff's Office; therefore, DOJ has insufficient information to evaluate your matter. It is unclear if the Sheriff's Office cited a statutory or common law reason for withholding the requested records or if it made the determination pursuant to the public records balancing test. However, we hope that the information provided in this letter is helpful. The Dodge County Sheriff's Office is copied on this letter, and we invite the Sheriff's Office to contact our office. We are happy to discuss the law and their response to your request.

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for denying the written request. Wis. Stat. § 19.35(4)(b). 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). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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, he generally 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>

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.doj.state.wi.us/office-open-government/office-open-government>). 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,

Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:lah

Cc: Dodge County Sheriff's Office





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

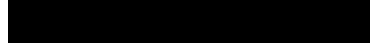
Josh Kaul  
Attorney General

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September 24, 2020

Mary Antoine



Prairie du Chien, WI 53821  
antoine@mhtc.net

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 12, 2019, in which you asked, “Is a chamber of commerce a government agency [and] bound by Wis. Statute 19.81 Open Meetings Law?” You wrote, “the City of Prairie du Chien collects room tax and then gives a percentage to the Council [which] uses the funds to promote tourism for the Prairie du Chien area. Because of the use of room tax, there is the thought that the Prairie du Chien Chamber of Commerce is subject to the rules of the Open Meetings Law.”

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 government 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 applies to every meeting of a governmental body. A governmental body is defined as:

[A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

The definition of a governmental body includes a “quasi-governmental corporation” which is not defined in the statutes. The Wisconsin Supreme Court discussed the definition of “quasi-governmental corporation” in *State v. Beaver Dam Area Development Corp.* (“*BDADC*”). *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a “quasi-governmental corporation” does not have to be *created* by the government or be *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.* ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances. The Court set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.* ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation’s records. *Id.* ¶ 62.

Based on the limited information you provided in your correspondence, DOJ cannot make a definitive determination as to whether the group in question is a “governmental body” as defined in Wis. Stat. § 19.82(1), or a “quasi-governmental corporation” as defined in the *BDADC* case, and, therefore, subject to the open meetings law. It is possible that a court could find that it is a quasi-governmental corporation because it appears to receive at least some of its funding from public sources and it serves a public function. *See* Kowalczyk Correspondence (Mar. 13, 2006). However, we have insufficient information to fully analyze the *BDADC* factors based on the limited information that you have provided.

If the open meetings law applies to a “governmental body” as defined in Wis. Stat. § 19.82(1), or a “quasi-governmental corporation” as defined in the *BDADC* case, then the law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

If you would like to learn more about the Wisconsin Open Meetings Law, DOJ’s Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings Law Compliance Guide on its website.

DOJ appreciates your concern. If you have additional questions, you may contact the Office of Open Government's Public Records Open Meetings (PROM) Help Line at (608) 267-2220. Thank you for your correspondence.

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,

A handwritten signature in blue ink that reads "Sarah K. Larson". The signature is written in a cursive style with a large, stylized "S" and "L".

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

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**Josh Kaul**  
Attorney General

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P.O. Box 7857  
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**Sarah K. Larson**  
Assistant Attorney General  
larsonsk@doj.state.wi.us  
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FAX 608/267-2779

September 24, 2020

Stacey Goodmanson  
721 Oxford Avenue, Suite 1400  
Eau Claire, WI 54703  
stacey.goodmanson@eauclairewi.gov

Dear Ms. Goodmanson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 8, 2019, in which you wrote, "I am the Records Division Supervisor for the Eau Claire Police Department. . . . In the last few years our labor costs have sky rocketed due to the fact we cannot charge to redact anymore. In this day and age, with squad and body cameras, the amount of time it takes to redact our records has increased exponentially." You provided that "[i]f a single video is three hours long, [your] office is spending between three and five hours for this one video." You asked, "Can we please update the Open Records Law for this very burdensome responsibility we've acquired?"

The Attorney General and DOJ's Office of Open Government (OOG) are committed to increasing government openness and transparency. The OOG works in furtherance of this 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. The OOG is only authorized to provide assistance within this scope. Therefore, we are unable to offer you any further assistance regarding updating the public records law but suggest that you contact your elected representatives in the Wisconsin Legislature if you wish to speak to someone about changing the law. We can, however, give you some general information about the public records law that we hope you will find helpful.

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 a "record" as 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). A record includes handwritten,

typed, or printed documents; maps and charts; photographs, films, and tape recordings; tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved; and electronic records and communications.

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. However, as noted above, video and audio files from body cameras and dash cameras are “records” under Wis. Stat. § 19.32(2). Further, the new body camera legislation, Wis. Stat. § 165.87, effective on March 1, 2020, sets forth that “[d]ata from a body camera used on a law enforcement officer” is also subject to the right of inspection and copying under the public records law, with redaction requirements set forth in the statute.

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 (citation omitted) (emphasis in original).

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 (an authority may not profit from its response to a public records request but may recoup all of its actual costs). Under the public records law, 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).

The law also permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). Additionally, an authority may require prepayment for the costs associated with responding to a public records request 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 (such as for locating a record) should be based on the pay rate of the lowest paid employee capable of performing the task. For more information on permissible fees under the public records law, 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.doj.state.wi.us/office-open-government/oog-advisories-and-attorney-general-opinions>).

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.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law and maintains a Public Records Law Compliance Guide on its website.

Thank you for your correspondence. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals' open government questions. The PROM telephone number is (608) 267-2220.

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,

A handwritten signature in blue ink that reads "Sarah K. Larson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

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TTY 1-800-947-3529  
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September 24, 2020

James Kuehn

[REDACTED]  
Mazomanie, WI 53560-9746  
jakuehn2002@yahoo.com

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 17, 2019, in which you wrote, "I lost my original birth certificate from buffalo new york, there are many online companies that promise certified copies but they seem not real to me. Can you suggest a sure way to get the real record?"

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. Based on the information you provided in your correspondence, it appears that the subject matter of your correspondence is outside this scope. Therefore, we are unable to offer you assistance in obtaining your birth certificate from Buffalo, New York. You may wish to contact the Vital Records Office in Buffalo. Their website is <https://www.buffalony.gov/279/Birth-Certificate-Request>.

We can, however, provide you with some general information about public records in Wisconsin that we hope you will find helpful. 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 a "record" as 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). A record includes handwritten, typed, or printed documents; maps and charts; photographs, films, and tape recordings; tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved; and electronic records and communications. "Record" does *not* include "drafts, notes, preliminary documents, and similar materials prepared for the

originator's personal use or by the originator in the name of a person for whom the originator is working." Wis. Stat. § 19.32(2).

Whether material is a "record" subject to disclosure under the public records law depends on whether the record is created or kept in connection with the official purpose or function of the agency. See OAG I-06-09, at 2 (Dec. 23, 2009). Not everything a public official or employee creates is a public record. The substance or content, not the medium, format, or location, controls whether something is a record. *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470 (1965).

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.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, and maintains a Public Records Law Compliance Guide on its website.

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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

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September 24, 2020

Sally Peterson

[REDACTED]  
Shell Lake, WI 54871  
petersonsally@hotmail.com

Dear Ms. Peterson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 25, 2019, in which you wrote, "As mayor for the city I am being denied to have my name/city put on the agendas and minutes mailing list like county board members. . . . I have been told I could get them off the county's website but these are often very untimely and not known when they will be available. There has been meetings held the first week in November which no meeting minutes are yet available."

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).

In an effort to increase transparency, DOJ recommends that governmental bodies keep minutes of all meetings. However, there is no requirement under the open meetings law for a governmental body to do so. The open meetings law only requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. *See De Moya Correspondence* (June 17, 2009). Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. *See I-95-89* (Nov. 13, 1989).

Thus, as long as the body creates and preserves a record of all motions and roll-call votes, the Wis. Stat. § 19.88(3) requirement is satisfied, and the open meetings law does not require the body 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. I-20-89 (Mar. 8, 1989). *See, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Thus, as can be seen from the discussion above, the open meetings law itself does not require governmental bodies to send out minutes or agendas to citizens using mailing lists, nor does the law require governmental bodies to post minutes and agendas on mailing lists. That said, the open meetings law would also not prohibit such practices. In the interest of government transparency, DOJ's Office of Open Government (OOG) encourages the dissemination of minutes.

In short, the open meetings law does not dictate all procedural aspects of how bodies run meetings, including the drafting and dissemination of minutes. The open meetings law only governs public access to and notice of meetings of governmental bodies, as well as requiring a record of all motions and roll-call votes, as set forth in Wis. Stat. § 19.88(3). As noted above, other statutes outside the open meetings law may prescribe particular minute-taking or recordkeeping requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law. However, we cannot advise you further on those statutes, as they fall outside the scope of the OOG's authority and responsibilities under the open meetings law. If meeting minutes have been created and you wish to receive them, you may want to make a public records request for the minutes.

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.doj.state.wi.us/office-open-government/office-open-government>). 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

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September 24, 2020

Kevin Ryan

[REDACTED]  
Menasha, WI 54952  
ryanxme@aol.com

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 2, 2019, in which you wrote, "I have not been able to receive my Federal taxes and have been garnished because Billie Jo Bottine had fraudulently used my and my families social security numbers a few years ago and I need a copy of the court records from Federal Court in Green Bay from 3/14/2017."

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. Based on the information you provided in your correspondence, it appears that some of the subject matter of your correspondence, regarding the alleged fraud and garnishment, is outside this scope. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG's authority and responsibilities.

Further, regarding your request for "court records from Federal Court in Green Bay," DOJ has insufficient information to evaluate your request. We can, however, provide you with some general information about the public records law which you may find useful.

The Wisconsin 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).

In order to obtain records from an authority, you can make a public records request specifying the records you seek. Requests do not have to be in writing and the requester generally does not have to identify himself or herself, although there are exceptions for certain types of records. Wis. Stat. §§ 19.35(1)(h), 19.35(1)(i). The requester does not need to state the purpose of the request. *Id.* "Magic words" are not required. A request which reasonably describes the subject matter and length of time involved is sufficient. Wis. Stat. § 19.35(1)(h). Regarding your request for "court records from Federal Court in Green Bay,"

you may be able to obtain the records you seek by making a public records request to the clerk of courts office of the court that has the records you seek.

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 denying the written request. Wis. Stat. § 19.35(4)(b). 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, he generally 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/inneedalawyer/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.doj.state.wi.us/office-open-government/office-open-government>). 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

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FAX 608/267-2779

September 25, 2020

Aaron Sarbacker

████████████████████  
Madison, WI 53711  
aaron.sarbacker@dwd.wisconsin.gov

Dear Mr. Sarbacker:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 7, 2019, regarding your public records request to the Wisconsin Department of Workforce Development (DWD). You recently applied for a new position with DWD and when you did not receive an interview you requested “information on the range of scores for those who received interviews.” Your request was denied under Wis. Stat. § 230.13(1)(a). You believe that “the range of scores for those selected for an interview should be provided pursuant to Wisconsin Administrative Code under ER-MRS 6.08, and do not fall under the restrictions.” You wrote that you “believe that the release of this information is not restricted, and request review for determination.”

The Attorney General and DOJ’s Office of Open Government (OOG) appreciate your concerns regarding the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. DOJ cannot offer you legal advice or counsel concerning your public records request to DWD, as DOJ may be called upon to represent DWD. However, as a courtesy to you, we reached out to DWD to make them aware of your concerns.

The OOG works to increase government openness and transparency and we do so with a focus on the Wisconsin public records law and open meetings law. Based on the information you provided in your correspondence, it appears that some of the subject matter of your correspondence, regarding Wis. Stat. § 230.13(1)(a) and Wisconsin Administrative Code under ER-MRS 6.08, are outside this scope. Therefore, we are unable to offer assistance in matters outside the scope of the OOG’s authority and responsibilities.

Although we cannot offer you legal advice or counsel regarding your public records issue because DOJ may be called upon to represent the DWD, we can offer you some general information about the public records law that you may find helpful.

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).

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).

Information “pertaining to an employee’s employment examination, except an examination score if access to that score is not otherwise prohibited,” is exempted from disclosure under the public records law. Wis. Stat. § 19.36(10)(c). Information “relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees” is also exempted from disclosure under the public records law. Wis. Stat. § 19.36(10)(d). Wisconsin Stat. § 230.13 also provides that certain personnel records of state employees and applicants for state employment may be closed to the public. However, the OOG cannot advise you on the provisions of Wis. Stat. § 230.13 as that statute falls outside the scope of the OOG’s authority and responsibilities.

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 provides several remedies for a requester dissatisfied with an authority’s response, or lack of response, to a written 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, he generally exercises this authority

in cases presenting novel issues of law that coincide with matters of statewide concern. As explained above, DOJ may be called upon to represent DWD, therefore, we respectfully decline to pursue an action for mandamus on your behalf.

You may also 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:

Lawyer Referral and Information Service  
State Bar of Wisconsin  
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<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

The Attorney General and the 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.doj.state.wi.us/office-open-government/office-open-government>). 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 29, 2020

Robert Buntz

[REDACTED]  
Pepin, WI 54759  
captainrob@harborhillinn.net

Dear Mr. Buntz:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 13, 2020, in which you asked, "Is the Village Hall considered a public location for the purpose of meeting the notice posting requirements for an open meeting of the Village Board of Trustees?"

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 law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body's chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; *and* (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b).

In addition to these three requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body, but DOJ cannot advise you on other statutes that fall outside of the scope of the OOG's authority and responsibilities. In general, however, when a specific statute prescribes the type of meeting notice a governmental body must give, the body must comply with the requirements of that statute as well as the notice requirements of the open meetings law. Wis. Stat. § 19.84(1)(a).

It is important to note that notice to the public, notice to news media, and notice to the official newspaper are separate requirements. First, as to the public notice, communication from the chief presiding officer of a governmental body or such person's designee shall be made to the public using one of the following methods: 1) Posting a notice in at least 3 public places likely to

give notice to persons affected; 2) Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's Internet site; or 3) By paid publication in a news medium likely to give notice to persons affected. Wis. Stat. § 19.84(1)(b). If the presiding officer gives notice in the third manner, he or she must ensure that the notice is actually published.

Second, as to the notice to the news media, the chief presiding officer must give notice of each meeting to members of the news media who have submitted a written request for notice. Wis. Stat. § 19.84(1)(b); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶¶ 3–4, 7, 278 Wis. 2d 388, 692 N.W.2d 304. Although this notice may be given in writing or by telephone, it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. *See* 65 Op. Att'y Gen. Preface, v–vi (1976); 65 Op. Att'y Gen. 250, 251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. *See* 77 Op. Att'y Gen. 312, 313 (1988).

Third, as to the notice to the newspaper, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b). The governmental body is not required to pay for, and the newspaper is not required to publish, such notice. *See* 66 Op. Att'y Gen. 230, 231 (1977). As noted above, however, the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published. *See* Mallin Correspondence (Mar. 14, 2016).

Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date “reasonably proximate to the time and date of the meeting.” Wis. Stat. § 19.84(4).

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

Whether the notice is specific enough is determined on a case-specific basis, based on a reasonableness standard. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 27–29, 301 Wis. 2d 178, 732 N.W.2d 804. This includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Id.* ¶ 28. There may be less need for specificity where a meeting subject occurs frequently, because members of the public are more likely to anticipate that the meeting subject will be addressed, but novel issues may require more specific notice. *Id.* ¶ 31.

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* See also Herbst Correspondence (July 16, 2008). For additional information on the notice requirements of the open meetings law, please see pages 13 through 19 of the Open Meetings Law Compliance Guide available through DOJ's website (<https://www.doj.state.wi.us/office-open-government/office-open-government>).

DOJ is 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. § 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 29, 2020

Joseph Castellano

Beaver Dam, WI 53916  
joshua.castellano16@icloud.com

Dear Mr. Castellano:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 8, 2020, regarding your public records request to the Dodge County Sheriff's Department for "paper copies of records on file [REDACTED]." Chief Deputy Scott Mittelstadt told you "they have 3 records on file. . . . but will only release the first 2 as he determined the last record . . . is a juvenile record and will not be released under statute 938.396 (1)." Chief Deputy Mittelstadt suggested you "contact the Dodge County District Attorney and the Wisconsin Attorney General to get these records released."

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). "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. DOJ has insufficient information to evaluate the Dodge County Sheriff's Department's decision to not release the juvenile record to you. However, we hope that you will find the general information provided in this letter regarding the public records law helpful.

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 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). To obtain a writ of mandamus, the requester must establish four things: "(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law." *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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, he generally 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. nonetheless,

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  
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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,

A handwritten signature in blue ink that reads "Sarah K. Larson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Attorney General

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September 29, 2020

Tony Galli  
WKOW-TV (ABC) Madison, WI  
tgalli@wkow.com

Dear Mr. Galli:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 10, 2020, regarding your public records request to the Middleton-Cross Plains School District for “the amount of salary and any other employee-related payments made to a Middleton-Cross Plains School District employee . . . since the employee was placed on administrative leave in October in connection with the employee’s role in carrying out the administration of a test at Middleton High School.” On January 13, 2020, the school district responded to your request stating, “you were asking for information” and suggested you provide them “with a Public Records Request according to the statutory process.” You resubmitted your request on January 13, 2020 for “the total of work-related payments (salary, benefits, other employee payments) made to a Middleton High School staff member placed on paid, administrative leave the week of Oct. 19, 2019, from the time of the employee’s placement on leave to the present date.”

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).

A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. *See* Wis. Stat. § 19.35(1)(h). Generally, there are no “magic words” that are required, and no specific form is permitted to be required in order to submit a public records request.

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). The public records law also “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 (citation omitted) (“While a record will always contain information, information may not always be in the form of a record.”); *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.

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for denying the written request. Wis. Stat. § 19.35(4)(b). 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).

DOJ’s Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. DOJ was copied on the school district’s response to your January 13, 2020 request and it appears that the school district provided you with the information that you sought. If that is not the case, 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, he generally exercises this authority only in cases presenting novel issues of law that coincide with matters of statewide concern. The Attorney General respectfully declines to take any action in this matter, including filing an action for mandamus on your behalf, at this time, because it appears that your original concerns have been resolved. Additionally, your matter, while important, does not appear to present novel issues of law that coincide with matters of statewide concern.



You may also 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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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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 29, 2020

Steve Howell

[REDACTED]  
Amery, WI 54001  
wisbound@yahoo.com

Dear Mr. Howell:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 23, 2020, regarding your public records request to the “Polk County Office of corrections and probation” for “a written copy of a person’s terms and conditions of probation.” You wrote, “They have refused me [t]he written copy. I have requested AA [sic] statement as to why they felt they did not have to supply me a written copy and they have refused to give me that. I informed them that under the freedom of information act I felt I was entitled to this information.”

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.”

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).

While the law requires an authority to fill a request or notify the requester of a determination to deny a request, the law does not require an authority to respond to a requester if the authority has no records responsive to a request. However, DOJ advises that an authority notify a requester if they have no responsive records. *Journal Times v. City of Racine Bd. of Police & Fire Comm’rs*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, ¶ 102, 866 N.W.2d 563.

The OOG encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. By copy of this letter, we are also making the authority in question aware of your concerns.

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). To obtain a writ of mandamus, the requester must establish four things: “(1) the petitioner has a clear legal right to the records sought; (2) the government entity has a plain legal duty to disclose the records; (3) substantial damages would result if the petition for mandamus was denied; and (4) the petitioner has no other adequate remedy at law.” *Watton v. Hegerty*, 2008 WI 74, ¶ 8, 311 Wis. 2d 52, 751 N.W.2d 369.

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, he generally 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,



Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah

cc: Captain Rob Drew, Polk County Corrections



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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FAX (608) 267-2779

September 29, 2020

Carol McClellan

[REDACTED]  
Madison, WI 53713  
cmac424@gmail.com

Dear Ms. McClellan:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 9, 2020, in which you wrote, "My question is: does the board of directors of an [sic] condominium association count as a governmental body in the eyes of the open meetings law?"

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 applies to every meeting of a governmental body. A governmental body is defined as:

[A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

The definition of a governmental body includes a “quasi-governmental corporation,” which is not defined in the statute, but the Wisconsin Supreme Court discussed the definition of “quasi-governmental corporation” in *State v. Beaver Dam Area Development Corp.* (“*BDADC*”), 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a “quasi-governmental corporation” does not have to be *created* by the government or be *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.* ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances. The Court set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.* ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation’s records. *Id.* ¶ 62.

In addition, a “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. 74 Op. Att’y Gen. 38, 40 (1985). Groups that include both members and non-members of a parent body, however, are not “subunits” of the parent body.

Although DOJ has insufficient information to determine whether this condominium association would be a quasi-governmental agency or a formally constituted subunit of a governmental agency, generally, a condominium association would not fit within these definitions and, therefore, would not be subject to the open meetings 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.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin open meetings law and maintains an Open Meetings 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.

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,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a stylized "L" at the end.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah



STATE OF WISCONSIN  
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September 29, 2020

Paul Riegel

[REDACTED]  
Grafton, W 53024  
priegel34@gmail.com

Dear Mr. Riegel:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated January 9, 2020, in which you wrote, "I am trying to determine if the Wisconsin Regional Healthcare Emergency Response Coalitions (HERC) under the WI Department of Health Services are subject to open meetings and records laws."

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.

Based on the limited information you provided in your correspondence, DOJ cannot make a definitive determination as to whether each group in question would be considered an authority under the public records law. It is possible, however, that a court could find that the group is an authority if, for example, it is "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.” Wis. Stat. § 19.32(1). It is also possible that the group is an authority if it meets the definition of a “governmental or quasi-governmental corporation,” as discussed below.

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).

A governmental body is defined as:

[A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Wis. Stat. § 19.82(1). The list of entities is broad enough to include essentially any governmental entity, regardless of what it is labeled. Purely advisory bodies are subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). An entity that fits within the definition of governmental body must comply with the requirements of the open meetings law.

The definition of a governmental body includes a “quasi-governmental corporation” which is not defined in the statutes. The Wisconsin Supreme Court discussed the definition of “quasi-governmental corporation” in *State v. Beaver Dam Area Development Corp.* (“BDADC”). *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a “quasi-governmental corporation” does not have to be *created* by the government or be *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.* ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances. The Court set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.* ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation’s records. *Id.* ¶ 62.

Further, under the open meetings law, a “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. 74 Op. Att’y Gen. 38, 40 (1985). Groups that include both members and non-members of a parent body, however, are not “subunits” of the parent body.

Based on the limited information you provided in your correspondence, DOJ cannot make a definitive determination as to whether the group in question is a “governmental body” as defined in Wis. Stat. § 19.82(1), or a “quasi-governmental corporation” as defined in the *BDADC* case, and, therefore, subject to the open meetings law. It is possible that a court could find that it is a quasi-governmental corporation because it appears to receive at least some of its funding from public sources and it serves a public function. *See* Kowalczyk Correspondence (Mar. 13, 2006). However, we have insufficient information to fully analyze the *BDADC* factors based on the limited information that you have provided.

If the open meetings law applies to a “governmental body” as defined in Wis. Stat. § 19.82(1), or a “quasi-governmental corporation” as defined in the *BDADC* case, then the law requires that public notice of all meetings of a governmental body must be given by communication from the governmental body’s chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1). In addition to these requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body.

Every public notice of a meeting must give the time, date, place and subject matter of the meeting, and the notice must be in such a form so as to reasonably apprise the public of this information. Wis. Stat. § 19.84(2). The notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–78, 494 N.W.2d 408 (1993).

If you would like to learn more about the public records law and open meetings law, DOJ’s Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin public records law and open meetings law and maintains a Public Records Law Compliance Guide and an Open Meetings 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.

The information provided in this letter is provided pursuant to Wis. Stat. §§ 19.39 and 19.98 and does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah K. Larson". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Sarah K. Larson  
Assistant Attorney General  
Office of Open Government

SKL:lah