

2021 2nd Quarter Correspondence

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June 28, 2021

Ashley Long

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Dear Ms. Long:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 31, 2020, about your open meetings law complaint regarding the Amery City Council.

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. Based on the information you provided, it appears that some of the subject matter of your correspondence is outside of that scope, including the alleged violations of Wis. Stat. §§ 43.58(1), 43.58(7)(e), and 43.58(2)(a), the 2008 "Pledge Agreement," and the allegation of threats received (*i.e.*, the allegations you raised in numbers 1, 2, 3, and 7 in your correspondence).

Therefore, the OOG cannot provide you with legal assistance on matters outside of the OOG's scope of authority and responsibilities. However, to the extent your correspondence concerns the open meetings law (*i.e.*, the allegations you raised in numbers 4, 5, and 6 in your correspondence), we can provide you with some general information about the open meetings law. Based on the limited information in your correspondence, we have insufficient information to determine whether any violations occurred. Nevertheless, we hope that you find this information helpful.

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).

In your correspondence, you alleged the Amery City Council violated the open meetings law “by virtue of a quorum of city council members being present at and participating in Finance Committee meetings” (allegation 6). A meeting occurs when a convening of members of a governmental body satisfies two requirements. *See State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). The first requirement under the so-called *Showers* test is that there must be a purpose to engage in governmental business (the purpose requirement). Second, the number of members present must be sufficient to determine the governmental body’s course of action (the numbers requirement).

Regarding the purpose requirement, a body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority. *See State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–74, 494 N.W.2d 408 (1993). Thus, mere attendance at an informational meeting on a matter within a body’s realm of authority satisfies the purpose requirement. The members of the body need not discuss the matter or even interact. *Id.* at 574-76. This applies to a body that is only advisory and that has no power to make binding decisions. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

Regarding the numbers requirement, a quorum is the minimum number of a body’s membership necessary to act. Certainly, a majority of the members of a governmental body constitutes a quorum. However, a negative quorum, the minimum number of a body’s membership necessary to prevent action, also meets the numbers requirement. As a result, determining the number of members of a particular body necessary to meet the numbers requirement is fact specific and depends on the circumstances of the particular body.

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). If, for example, a fifteen-member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. Dziki Correspondence (Dec. 12, 2006). Groups that include both members and non-members of a parent body are not “subunits” of the parent body. Nonetheless, such groups frequently fit within the definition of a “governmental body”—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

Finally, when a quorum of the members of one governmental body attend a meeting of another governmental body under circumstances where their attendance is not chance or social, in order to gather information or otherwise engage in governmental business regarding a subject over which they have decision-making responsibility, two separate meetings occur, and notice must be given of both meetings. *See Badke*, 173 Wis. 2d at 577.

The Attorney General has advised that, despite the “separate public notice” requirement of Wis. Stat. § 19.84(4), a single notice can be used, provided that the notice clearly and plainly indicates that a joint meeting will be held and gives the names of each of

the bodies involved, and provided that the notice is published and/or posted in each place where meeting notices are generally published or posted for each governmental body involved. *See* Friedman Correspondence (Mar. 4, 2003).

The kinds of multiple meetings presented in the *Badke* case, and the separate meeting notices required there, must be distinguished from circumstances where a subunit of a parent body meets during a recess from or immediately following the parent body's meeting, to discuss or act on a matter that was the subject of the parent body's meeting. In such circumstances, Wis. Stat. § 19.84(6) allows the subunit to meet on that matter without prior public notice.

In your correspondence, you wrote you submitted an open records request to the City of Amery asking for closed session minutes, including closed session votes, as well as those in attendance" (allegation 5) You wrote, the "[i]nterim city administrator responded stating "[c]losed session minutes do not exist nor do the notes." 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).

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and roll-call votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." *See* Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. *See* De Moya Correspondence (June 17, 2009).

In your correspondence, you alleged the Amery City Council violated the open meetings law "by discussing topics in closed session, which legally should have been discussed in open session" (allegation 4). Wisconsin Stat. § 19.85 lists exemptions in which meetings may be convened in closed session. Any exemptions to open meetings are to be viewed with

the presumption of openness in mind. Such exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993). The exemptions should be invoked sparingly and only where necessary to protect the public interest and when holding an open session would be incompatible with the conduct of governmental affairs. “Mere government inconvenience is . . . no bar to the requirements of the law.” *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

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.

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. Although you have not asked DOJ to initiate an enforcement action, we respectfully decline to file an enforcement action on your behalf at this time, as your matter does not appear to present novel issues of law that coincide with matters of statewide concern.

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).

Based on the limited information contained in your correspondence, it appears that you may have filed a complaint with the district attorney and the district attorney has not commenced an action. Although the Attorney General is also declining to pursue an enforcement action at this time, other enforcement options may still be available to you.

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 open meetings law and maintains an Open Meetings 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. § 19.98 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 fluid and cursive, with a long horizontal flourish at the end.

Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:lah



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June 29, 2021

Carol Albers

[REDACTED]
Long Lake, WI 54542
pinerivergp6@gmail.com

Dear Ms. Albers:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 30, 2020, regarding your public records request to the Long Lake town clerk. You wrote, "I feel that the charge of \$25.00 is above and beyond a reasonable amount < [sic] according to the fee scheduled published" by DOJ's Office of Open Government. You paid the amount charged but asked if DOJ has "any recommendation on handling a situation like this in the future."

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).

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, 341 Wis. 2d 607, 815 N.W.2d 367 (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). An authority may choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e).

The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees 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 should be based on the pay rate (including fringe

benefits) of the lowest paid employee capable of performing the task. For more information on permissible fees, 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/news-releases/office-open-government-advisory-charging-fees-under-wisconsin-public-records-law>).

Regarding OOG's fee advisory and DOJ's own fee schedule, the advisory summarized the fees permitted under the public records law, particularly copying and location fees. By way of example, the advisory highlighted DOJ's then-recent update to its public records fee schedule and recommended that other authorities similarly re-evaluate their copying fees. The advisory made clear that each authority's actual, necessary, and direct costs of reproduction may vary. Authorities can use DOJ's published fee schedule as guidance and the OOG can offer assistance to any authority in developing a methodology for determining reproduction fees. However, the purpose of the advisory was not to mandate the fee amounts that authorities must charge. Neither DOJ nor the attorney general has statutory authority to do so. *See Cardamone Correspondence (March 28, 2019)*.

The OOG also encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester. It is also helpful in resolving issues such as those related to fees. If a requester is concerned about potential fees, it may be helpful that he or she express such concerns in the request. For example, a requester may ask an authority to contact them if they anticipate fees will exceed a certain dollar amount. If the fees are anticipated to exceed a certain dollar amount that the requester sets forth, the authority could then contact the requester to inquire as to whether the requester desires to limit the scope or timeframe of the request in order to reduce the cost.


Similarly, as a best practice, an authority should implement a policy in which they notify requesters if they anticipate fees will exceed a certain amount. The authority's anticipated fees can be expressed in a letter requesting prepayment under Wis. Stat. § 19.35(3)(f), or can be communicated to the requester directly in some other way before the request is fulfilled. This communication between an authority and a requester regarding the fees associated with a request, prior to the request being fulfilled, may prevent a requester from no longer wanting the records because the fees are more than were expected.

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 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,

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



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June 29, 2021

Bryce Davis
feminist.justice@outlook.com

Dear Mr. Davis:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 28, 2020, regarding your FOIA request to the Department of the Navy “in regard to the *preventable Marines United Scandal*.” You wrote, “I felt that the response [received from the Department of the Navy] was a bit questionable because, from my understanding, it appears that I am basically being asked to have precise knowledge of the potential file in question. . . Although I have filed multiple FOIA’s in the past, maybe you all will have better luck.”

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.”

Based on the information you provided in your correspondence, it appears that the subject matter of your correspondence, regarding your FOIA request to the Department of the Navy, is outside the scope of the Wisconsin public records law. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the Office of Open Government’s responsibilities.

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.

Thank you for your correspondence. We are dedicated to the work necessary to preserve Wisconsin’s proud tradition of open government.

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Sincerely,

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Sarah K. Larson
Assistant Attorney General
Office of Open Government

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June 29, 2021

Alan Ferguson
alan@hssssoftware.com

Dear Mr. Ferguson:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 13 and 22, 2020, regarding your public records request to the Dane County Sheriff's Office. You provided the records you received and the letter explaining the reasons for redactions. You requested DOJ "pursue a mandamus action for review of these decisions on redaction."

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).

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. 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.

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.

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Sincerely,

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Sarah K. Larson
Assistant Attorney General
Office of Open Government

SKL:lah



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June 29, 2021

Gary Kohlenberg

[REDACTED]
Oconomowoc, WI 53066

Dear Mr. Kohlenberg:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 9, 2020, regarding your public records request to Walworth County for “a digital file.” You were informed the fee would be \$200.00 and asked Walworth County “which exception to the public records Statute 19.35(3) they used in charging an amount in excess of that prescribed by state statute.” You wrote, “no exception was provided by their corporate counsel. I believe Walworth County may be in non-compliance with State Statute 19.35(3).” You asked DOJ to “[p]lease review.” I also note that, on March 26, 2020, you and I had a related phone call about this issue.

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, 341 Wis. 2d 607, 815 N.W.2d 367 (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). The copy fees charged by an authority may not exceed the “actual necessary and direct cost of reproduction and transcription” unless another law establishes such a fee or authorizes such a fee to be established by law. Wis. Stat. § 19.35(3)(a).

The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority may require a requester prepay any such fees 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 should be based on the pay rate (including fringe benefits) of the lowest paid employee capable of performing the task. However, an authority may also choose to provide copies of a requested record without charging fees or by reducing fees where an authority determines that waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e). For more information on permissible fees, 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/news-releases/office-open-government-advisory-charging-fees-under-wisconsin-public-records-law>).

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 fees established by the Walworth County Board in the Walworth County Code of Ordinances, is outside this scope. Therefore, we are unable to offer you assistance regarding your concerns that are outside the scope of the OOG's responsibilities.

As already noted, however, there may be other laws outside of the public records law establishing fees for the records in question, potentially rendering those fees permissible under the public records law. *See* Wis. Stat. § 19.35(3) (allowing fees outside the public records law if those fees are established by another law). In this case, the county cited its own fee ordinances as the basis for charging the fees at issue here. Although OOG is not authorized to provide advice about other laws, including county ordinances, which fall outside of the OOG's scope and authority under the public records law, DOJ would caution that, unless the county ordinance explicitly sets forth fees for the records in question, the permissible fees for the records should not exceed the "actual, necessary, and direct" costs of fulfilling public records requests for those records.

Based on the information available to DOJ set forth in your correspondence, it appears that the Walworth County Corporation Counsel, Attorney Michael Cotter, is aware of your concerns, and I have also copied him on this correspondence. It also appears that this fee issue may have been discussed already in a county finance committee meeting, but it is unclear at this time whether the issue has been resolved. The OOG encourages authorities and requesters to maintain an open line of communication. This helps to avoid misunderstandings between an authority and a requester, and to resolve disputes or issues such as those related to fees.

Finally, it bears mentioning that you were told that you could obtain the same assessment information at no charge by using the Walworth County website. The Attorney General has previously advised that agencies may not use online record posting as a substitute for their public records responsibilities. Nonetheless, providing public access to records via the internet can greatly assist agencies in complying with the statute by making posted materials available for inspection and copying, since that form of access may satisfy many requesters.

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). A requester who prevails in such an action is entitled to reasonable attorney fees, damages of not less than \$100.00, and other actual costs. Wis. Stat. § 19.37(2). A court may award punitive damages if the court finds that an authority or legal custodian arbitrarily or capriciously denied or delayed response to a public records request or charged excessive fees. Wis. Stat. § 19.37(3).

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 at this time.

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
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666

<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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 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

Cc: Walworth County Corporation Counsel



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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June 29, 2021

Joseph Korch

Porterfield, WI 54159

Dear Mr. Korch:

The Wisconsin Department of Justice (DOJ) is in receipt of your undated correspondence, received March 4, 2020, regarding alleged open meetings law violations related to a “Feb. 6, . . . planned . . . meeting . . . at the Peshtigo Town Hall.” You wrote, a local resident “went to the town hall and saw the men gathering, disapproved of their meeting, and demanded to be allowed to attend. After a long standoff and no meeting, the men left. . . . Because 2 of 5 TOP members attended this planned meeting, there was no quorum.” You asked, “Were they required to publish a notice of this meeting? How does the Open Meetings Act apply to an informal grouping such as this?”

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 defines a “meeting” as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter

Wis. Stat. § 19.82(2). A “convening of members” occurs when a group of members gather to engage in formal or informal government business, including discussion, decision, and information gathering. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 572, 494 N.W.2d 408 (1993).

The presence of members of a governmental body does not, in itself, establish the existence of a “meeting” subject to the open meetings law. Under the so-called *Showers* test, a meeting of a governmental body exists, such that prior notice is required by law, when (1) there is a purpose to engage in government business (the purpose requirement); and (2) the number of members present is sufficient to determine the governmental body’s course of action (the numbers requirement). *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987). A meeting does not exist where the members are gathered by chance or for social reasons. *Badke*, 173 Wis. 2d at 576.

Regarding the purpose requirement, a body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority. *See Badke*, 173 Wis. 2d at 573–74. Thus, mere attendance at an informational meeting on a matter within a body’s realm of authority satisfies the purpose requirement. The members of the body need not discuss the matter or even interact. *Id.* at 574–76. This applies to a body that is only advisory and that has no power to make binding decisions. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

Regarding the numbers requirement, a quorum is the minimum number of a body’s membership necessary to act. Certainly, a majority of the members of a governmental body constitutes a quorum. However, a negative quorum, the minimum number of a body’s membership necessary to prevent action, also meets the numbers requirement. As a result, determining the number of members of a particular body necessary to meet the numbers requirement is fact specific and depends on the circumstances of the particular body.

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). If, for example, a fifteen-member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. Dziki Correspondence (Dec. 12, 2006). Groups that include both members and non-members of a parent body are not “subunits” of the parent body. Nonetheless, such groups frequently fit within the definition of a “governmental body”—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

Finally, the requirements of the open meetings law also extend to walking quorums. A “walking quorum” is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. *See Showers*, 135 Wis. 2d at 92. The danger is that a walking quorum may produce a predetermined outcome and thus render the publicly held meeting a mere formality. *See State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 685–88, 239 N.W.2d 313 (1976). Thus, any attempt to avoid the appearance of a “meeting” through use of a walking quorum or other “elaborate arrangements” is subject to prosecution under the open meetings law. *Id.* at 687.

The essential feature of a walking quorum is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. A walking quorum, however, may be found when the members: 1) have effectively engaged in collective discussion or information gathering outside of the context of a properly noticed meeting; and 2) have agreed with each other to act in some uniform fashion.

It is important to note that the phrase “convening of members” in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a “convening of members” under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

In your correspondence, you indicated that “there was no quorum” at the meeting. Based on the limited information in your correspondence, however, we cannot make a definitive determination of whether a quorum or a negative quorum existed on Feb. 6, and whether notice under the open meetings law was required. Nevertheless, we hope you find this information helpful.

In your correspondence you also wrote that at township meetings the chairman “repeatedly disallows public input on the [PFAS] issue.” While Wisconsin law requires that meetings of governmental bodies be open to the public so that citizens may attend and observe open session meetings, the law does not require a governmental body to allow members of the public to speak or actively participate in the body’s meetings. While the open meetings law does allow a governmental body to set aside a portion of a meeting for public comment, it does not require a body to do so. Wis. Stat. §§ 19.83(2), 19.84(2). There are some other state statutes that require governmental bodies to hold public hearings on specified matters. Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. For example, a body may choose to limit the time each citizen has to speak.

If a governmental body decides to set aside a portion of an open meeting as a public comment period, this must be included in the meeting notice. During such a period, the body may receive information from the public and may discuss any matter raised by the public. If a member of the public raises a subject that does not appear on the meeting notice, however, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting for which more specific notice can be given. In addition, the body may not take formal action on a subject raised in the public comment period, unless that subject is also identified in the meeting notice.

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.

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).

You may 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 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 open meetings law and maintains an Open Meetings 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. § 19.98 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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**Sarah K. Larson
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FAX 608/267-2779

June 29, 2021

Veron Verjinsky
[REDACTED]

Wisconsin Rapids, WI 54495

Dear Mr. Verjinsky:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 11, 2020 and September 2, 2020, regarding concerns relating to the City of Wisconsin Rapids' special assessment process and public hearings under Chapter 66 of the Wisconsin Statutes. You asked DOJ to "review our complaint and act if we are right and advise us if we are wrong."

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. Based on the information you provided, it appears that the subject matter of your correspondence is outside of that scope, including regarding the city's special assessment process and public hearings under Chapter 66 of the Wisconsin Statutes. Therefore, the OOG cannot provide you with legal assistance on matters outside of the OOG's scope of authority and responsibilities.

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, Wis. Stat. §§ 19.81 to 19.98, and maintains an Open Meetings 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. § 19.98 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**

Josh Kaul
Attorney General

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FAX (608) 267-2779

June 29, 2021

Annalyse Victor

[REDACTED]
Eagle, WI 53119
annalyse.kreger@gmail.com

Dear Ms. Victor:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 18, 2020, in which you wrote that you “have been reading Wisconsin Open Meetings Law Compliance Guide but can not find the the rules specifically saying how long a town gets to respond to an issue that was presented at a town meeting.” You “presented an issue back in Jan 2017” which was “discussed in closed chambers” and you were told you “would have a resolution or response in week.” You have “reached out to the town on multiple occasions without response.” You asked, “Can a town really not give you a response for three years when you were on the agenda and on the minutes?”

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, regarding “how long a town gets to respond to an issue that was presented at a town meeting,” is outside this scope. Therefore, the OOG cannot provide you with assistance regarding such subject matter.

We can, however, give you some general information regarding the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, that we hope you will find helpful. 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).

With respect to notice, the open meetings law provides for the level of specificity required in agenda items for open and closed meetings, as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). 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.” *Id.* The notice must be in such a form so as to reasonably apprise the public of this information. *Id.*

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. The notice requirement in the open meetings law functions to assure that members of the public are reasonably apprised of what is discussed at such meetings. *Id.* ¶ 34. The Wisconsin Supreme Court has reasoned that 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, 573–74, 577–78, 494 N.W.2d 408 (1993).

Therefore, 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. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶ 34, 301 Wis. 2d 178, 732 N.W.2d 804. 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).

If an agenda item has been noticed for a specific time, the governmental body should make certain that the agenda item is discussed at that time, because citizens might have relied on the fact that a specific time was given. *Id.* But if an agenda item does not have a specific time listed, it is within the discretion of the governmental body to reorganize its agenda at the meeting. *Id.*

Nor is a governmental body required to actually discuss every item contained in the public notice. See Black Correspondence (Apr. 22, 2009). It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. See Krueger Correspondence (Feb. 13, 2019).

If you would like to find out more about what happened at the meeting or after the meeting, you might consider submitting a public records request to the town, requesting any records pertaining to that particular meeting or topic. The OOG would also encourage you to maintain an open line of communication with the town to let them know you are still interested in what was discussed.

If you would like to learn more about the open meetings law or 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 open meetings law and public records law, as well as maintaining an Open Meetings Law Compliance Guide and 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. § 19.98 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**

Josh Kaul
Attorney General

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FAX (608) 267-2779

June 30, 2021

Ms. Sandra Anne Gayle
sgayle.paralegal@gmail.com

Dear Ms. Gayle:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 4, 2020, in which you wrote, "I am writing to dispute the following information in my file in public records." You provided information regarding eight circuit court cases and wrote the information is "inaccurate" and "should not be linked to my credit information" or requested information "be removed from public records." You asked DOJ to "[p]lease reinvestigate these matters and delete the above-disputed items as soon as possible."

The Attorney General and 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 regarding your concerns that are outside the scope of the OOG's responsibilities.

However, we can provide you with some information that you may find helpful. Wisconsin Circuit Court Access (WCCA) provides public access to Wisconsin circuit court records for counties that use the Consolidated Court Automation Program (CCAP) case management system. DOJ is not the custodian of those records. You may wish to contact the Wisconsin Court System regarding your issue. The Frequently Asked Questions section of the Wisconsin Court System's website may also be of assistance to you (<https://wcca.wicourts.gov/faq.xsl;jsessionid=CB47063B37C5D8E484EEF9A4D11F7688.ren der6#Faq1>). Additionally, you may wish to contact the credit reporting agencies directly regarding your disputes.

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
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<http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx>

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**

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FAX 608/267-2779

June 30, 2021

Anthony Hallman
[REDACTED]

Three Lakes, WI 54562
northwoodst@gmail.com

Dear Mr. Hallman:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 2, 2020, in which you wrote, “does a quorum mean 50% plus 1 of the members fixed by law regardless of the number of vacancies of those positions? Further, can the board meeting be called to order lacking a quorum? And lastly if a quorum is obtained by electronic means must the individuals attending electronically remain online throughout the entire meeting or just attend electronically for the vote/action items?”

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 explained below, your questions fall outside the scope of the open meetings law. Therefore, the OOG cannot provide you with specific assistance regarding your questions, but we can provide you with some general information about the open meetings law that we hope you will find helpful.

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 publically 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 defines a “meeting” is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body

are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter

Wis. Stat. § 19.82(2). A “convening of members” occurs when a group of members gather to engage in formal or informal government business, including discussion, decision, and information gathering. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 572, 494 N.W.2d 408 (1993).

A meeting occurs when a convening of members of a governmental body satisfies two requirements. *See State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). The first requirement under the so-called *Showers* test is that there must be a purpose to engage in governmental business (the purpose requirement). Second, the number of members present must be sufficient to determine the governmental body’s course of action (the numbers requirement). A meeting does not include any social or chance gathering or conference that is not intended to avoid the requirements of the open meetings law.

Regarding the purpose requirement, a body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority. *See State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573–74, 494 N.W.2d 408 (1993). Thus, mere attendance at an informational meeting on a matter within a body’s realm of authority satisfies the purpose requirement. The members of the body need not discuss the matter or even interact. *Id.* at 574-76. This applies to a body that is only advisory and that has no power to make binding decisions. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

Regarding the numbers requirement, a quorum is the minimum number of a body’s membership necessary to act. Certainly a majority of the members of a governmental body constitutes a quorum. However, a negative quorum, the minimum number of a body’s membership necessary to prevent action, also meets the numbers requirement. As a result, determining the number of members of a particular body necessary to meet the numbers requirement is fact specific and depends on the circumstances of the particular body.

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). If, for example, a fifteen-member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. Dziki Correspondence (Dec. 12, 2006). Groups that include both members and non-members of a parent body are not “subunits” of the parent body. Nonetheless, such groups frequently fit within the definition of a “governmental body”—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

Further, as noted above, if one-half or more of the members of a governmental body are present, the gathering is “rebuttably” presumed to be a “meeting” for the purpose of “exercising the responsibilities, authority, power or duties delegated to or vested in the body.” See Wis. Stat. § 19.82(2). Therefore, whenever one-half or more of the members of a governmental body are present, governmental officials should not discuss government business unless the gathering complies with all of the requirements of the open meetings law, either as an open meeting or a closed meeting.

It is important to note that the phrase “convening of members” in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a “convening of members” under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

Finally, the requirements of the open meetings law also extend to walking quorums. A “walking quorum” is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. See *Showers*, 135 Wis. 2d at 92. The danger is that a walking quorum may produce a predetermined outcome and thus render the publicly held meeting a mere formality. See *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 685–88, 239 N.W.2d 313 (1976). Thus, any attempt to avoid the appearance of a “meeting” through use of a walking quorum or other “elaborate arrangements” is subject to prosecution under the open meetings law. *Id.* at 687.

The essential feature of a walking quorum is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. A walking quorum, however, may be found when the members: 1) have effectively engaged in collective discussion or information gathering outside of the context of a properly noticed meeting; and 2) have agreed with each other to act in some uniform fashion.

In summary, a “meeting” of a governmental body occurs only if there are a sufficient number of members present to determine the body’s course of action. If one-half or more of the members of a governmental body are present, the gathering is “rebuttably” presumed to be a “meeting” for the purpose of “exercising the responsibilities, authority, power or duties delegated to or vested in the body.” See Wis. Stat. § 19.82(2). The determination of whether a quorum exists for a particular body, however, may depend on other laws or requirements that are outside of the scope of the open meetings law. Although the open meetings law governs public access to meetings of governmental bodies, it does not dictate all procedural aspects of how bodies run meetings, including how vacancies and attendance are handled by the body. Other laws may dictate those procedures, but the OOG cannot advise you on those matters, as they fall outside of the scope of the OOG’s statutory authority and responsibilities.

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, Wis. Stat. §§ 19.81 to 19.98, 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**

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June 30, 2021

Richard Hasse
rich.hasse3379@gmail.com

Dear Mr. Hasse:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 7, 2020, in which you wrote, "In [t]he Portage Daily Register the other day, the article said the election of officers of the Columbia County Board was conducted by a secret ballot. There is nothing in the standing rules of the board which allows a secret ballot." You requested DOJ and the Office of Open Government (OOG) "investigate the legality of that secret ballot," "the rationale for a secret ballot," "who may have called for the secret ballot and what ever became of the ballot."

DOJ is also in receipt of your correspondence, dated June 12, 2020, in which you wrote, "There has not been a single [Columbia County] HHS Board meeting minutes published since the minutes of the meeting on January 8th, 2020! The meetings of the HHS Board for the months of March, April and [M]ay are missing from the public website as of this moment." You added, "What has happened in meetings since that time?" You requested "DOJ/OOG investigate this matter."

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).

Regarding your June 7, 2020 correspondence, the open meetings law states, "Unless otherwise specifically provided by statute, no secret ballot may be used to determine any election or decision of a governmental body, except the election of officers of a body. Wis. Stat. § 19.88(1). In your correspondence you wrote that "the election of officers of the Columbia County Board was conducted by secret ballot." Based on the limited information you provided, this does not appear to be a violation of the open meetings law. The law allows for the use of a secret ballot in the circumstance that you referenced because the board was electing officers of a governmental body.

Regarding your June 12, 2020 correspondence, 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)*.

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and roll-call votes should be, as mentioned previously, the general legislative policy of the open meetings law is that “the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body’s records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. *De Moya Correspondence (June 17, 2009)*.

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 wish to submit a public records request for the minutes. Currently, Columbia County’s website includes Health and Human Services Board meeting minutes from 2005 through May 2021, including March and May 2020.

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 file an enforcement action on your behalf.

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).

You may 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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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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 30, 2021

Darla Meyers

[REDACTED]
Hudson, WI 54016
meyersdm1@baldwin-telecom.net

Dear Ms. Meyers:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 17, 2020, in which you requested “a *mandamus* regarding the destruction of government records that took place at the Village of North Hudson, Hudson, Wisconsin.” You wrote, “this issue relates to deletion of e-mails.” I also note that we had a telephone conversation about this same matter on April 14, 2020.

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).

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. Zinngarbe 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.

In your correspondence you included a letter from St. Croix County District Attorney Michael Nieskes declining your request for *mandamus*. In his response he wrote, “the subcontracted IT provider for the Village of North Hudson permanently deletes all emails that have been placed in the deleted area by the receiver or sender 30 days after they were deleted by the user. It appears that the requested searches were not found due to this process. Whether or not this process is in violation of the record retention policy I am not going to determine.”

Regarding the allegation in your correspondence that the authority's deletion of the records was improper, this pertains to records retention, not the public records law *per se*. 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. A requester cannot seek relief under the public records law for alleged violations of record retention statutes when the non-retention or destruction predates submission of the public records request. *Cf.* Wis. Stat. § 19.35(5); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶¶ 13–15, 306 Wis. 2d 247, 742 N.W.2d 530.

In other words, 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 Gehl*, 306 Wis. 2d 247, ¶ 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 (or 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 to enforce the public records law.

Other than this, however, 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.

Based on the information you provided in your correspondence, including the district attorney's conclusions based on the investigation that was conducted, it appears that the authority did not have the records you requested at the time you submitted your public records request. Therefore, the record retention obligations under the public records law would not apply. Rather, the authority's obligation to retain the records would have been governed by the records retention statutes and record retention schedules created pursuant to those statutes.

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 the record retention requirements under Wis. Stat. §§ 16.61 and 19.21 or any pertinent record retention schedules created pursuant to those statutes, because those statutes fall outside the scope of the OOG's responsibilities and authority. For more information on records retention, you may wish to visit the Wisconsin Public Records Board website at <http://publicrecordsboard.wi.gov/>.

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.

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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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 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,

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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June 30, 2021

Mason Muerhoff

[REDACTED]
Madison, WI 53703
masonmuerhoff@gmail.com

Dear Mr. Muerhoff:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 18, 2020, in which you wrote, "I was recently denied information that I requested as part of a Freedom Of Information Act and Wis. Open Records/Meeting Laws request to the University of Wisconsin Police Department." Although your correspondence referred to an explanation of the denial, it provided no additional information.

DOJ cannot offer you legal advice or counsel concerning this issue as DOJ may be called upon to represent the University of Wisconsin-Madison Police Department (UWPD). DOJ strives to provide the public with guidance on the interpretation of our State's public records and open meetings statutes. However, DOJ must balance that role with its mandatory obligation to defend state agencies and employees in litigation pursuant to Wis. Stat. § 165.25(6). Where that statutory obligation is at play, DOJ has a conflict in providing advice on the same topic.

Although we are unable to offer you assistance regarding your public records request to UWPD, we can inform you that 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. As explained above, DOJ may be called upon to represent UWPD. Therefore, 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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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June 30, 2021

Robert Papke
[REDACTED]

Sturgeon Bay, WI 54235
bobhpapke@gmail.com

Dear Mr. Papke:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 16, 2020, in which you wrote, "Wisconsin Open Meeting Law Violation: 11 of 15 Milwaukee City alder-persons have 'signed on' to a major budget cutting plan without public notice of a scheduled meeting. Contrary to Open Meeting Law." Your correspondence did not provide any additional information.

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 information you provided is insufficient to properly evaluate your concern. However, we can provide you with some general information about the open meetings law that you may find helpful.

The Wisconsin 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. *See* Wis. Stat. § 19.84(1)(a).

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).

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>).

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 file an enforcement action on your behalf.

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).

You may 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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Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah