2024 1st Quarter Correspondence

Index

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

January 19, 2024

Sheila Palinkas
Cambridge Community Fire & EMS Commission
secretary-treasurer@cambridgeareafirecommission.com

Dear Sheila Palinkas:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 16, 2023, regarding a meeting notice issue. You wrote, "We had a meeting on 11/2 where four of our five members (towns/villages) posted a meeting notice. The clerk of the fifth member responded that she was told not to post the meeting. We went forward with the meeting noting that in the minutes and understanding that any decisions may need to be rolled back if the DOJ says the meeting was illegal. Now we need to schedule an emergency meeting to handle some legal issues that have surfaced and it may happen again." In related correspondence to DOJ, you inquired about legal action against an allegedly noncompliant member of the commission, which you serve as Secretary-Treasurer.

On January 18, 2024, you spoke by phone with DOJ's Office of Open Government about your above-described correspondence. The discussion regarded certain provisions of the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, which 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).

As discussed during the January 18, 2024 call, 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 public, those news media who have filed a written request for such notice, and the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05, and 985.06) or, if there is no such paper, a news medium likely to give notice in the area. *See* 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. Wis. Stat. § 19.84(1)(b) provides that one of the following three methods shall be used to provide the public with notice of a meeting: (1) posting a notice in at least three public places likely to give notice to persons affected; (2) posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the government

body's website; or (3) paid publication in a news medium likely to give notice to persons affected.

As further discussed during the January 18, 2024, call, the open meetings law requires only that a governmental body create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). Written meeting minutes are commonly used to comply with this requirement, but written minutes are not required by the open meetings law as long as a record of all motions and roll-call votes is otherwise created and maintained. Please be aware that other statutes, outside of the open meetings law, may impose additional record- or minute-keeping obligations on certain governmental bodies. 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).

The open meetings law also provides timing for releasing agendas, as well as the level of specificity required in agenda items for open meetings, in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id*. Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

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

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

The open meetings law does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that "adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified." *Buswell*, 2007 WI 71, ¶ 37 n.7. But the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an

informed decision whether to attend. *Id.* Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id. See also* Herbst Correspondence (July 16, 2008).

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

If you would like to learn more about the open meetings law, including additional information on the notice and record-keeping requirements, 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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 1, 2024

Anthony Tomasi
tonytomasi@gmail.com

Dear Anthony Tomasi:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 18, 2023, in which you wrote, "I am writing to you concerning the open records requests that I submitted with the Milwaukee county public open records requests. I submitted open records requests on 2/3/2023 2/15/2023 and 2/17/2023 . . . . My open records request[s] are still open, and haven't been addressed in a reasonable amount of time."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an

authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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). Please note that, in Milwaukee County, the Milwaukee County Office of Corporation Counsel – *not* the district attorney – serves as legal counsel for the purposes of enforcement of the public records law. Requesters seeking records found in Milwaukee County would therefore submit a request to the Milwaukee County Office of Corporation Counsel instead of the district attorney.

The Attorney General is authorized to enforce the public records law; however, the Attorney General normally 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, we respectfully decline to pursue an action for mandamus on your behalf.

You may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCBF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 1, 2024

Robert Ulander
[redacted]
Waterford, WI 53185
rulander@townofwaterford.net

Dear Robert Ulander:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, received June 23, 2022, in which you requested "an investigation and review of the Waterford Town Board's closed session held on June 22, 2022." You wrote, "The published notice for the meeting did not provide sufficient information to discern whether Wisconsin statutes authorized a closed session." You provided the following, "The Town of Waterford's notice stated: 'After calling the meeting to order in open session, the Town Board will then go into closed session, pursuant to Wisconsin Statu[t]e 19.85(1)(c) . . . in respective to the Department of Public Works and 19.85(1)(e) . . . in respective to Police and Fire Contracts.'"

As you know, 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).

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).

Under the open meetings law, a closed session is authorized for "[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility."

Wis. Stat. § 19.85(1)(c). The language of the exemption refers to a "public employee" rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies "from potential lawsuits resulting from open discussion of sensitive information." *Oshkosh Nw. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees. *See* 80 Op. Att'y Gen. 176, 177–78 (1992). *See also Buswell*, 2007 WI 71, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees").

Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general. 80 Op. Att'y Gen. 176, 178–82. The section authorizes closure to determine increases in compensation for specific employees. 67 Op. Att'y Gen. 117, 118. Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee's contract at the expiration of the contract term, but not to determine whether to reduce or increase staffing, in general. *See* 66 Op. Att'y Gen. 211, 213.

Under the open meetings law, a closed session is authorized for "[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). Thus, the Wis. Stat. § 19.85(1)(e) exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds, because the exemption also authorizes a closed session for "conducting other specified public business." For example, the Attorney General has determined that the exemption authorized a school board to convene in closed session to develop negotiating strategies for collective bargaining. 66 Op. Att'y Gen. 93, 96-97 (1977).

However, it is important to note two things: First, exemptions authorizing a governmental body to meet in closed session should be construed narrowly. Governmental officials must keep in mind that this exemption is restrictive, not expansive. 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. Second, a closed session under this exemption is only permissible "whenever competitive or bargaining reasons require a closed session." The use of the word "require" in Wis. Stat. § 19.85(1)(e) limits that exemption to situations in which competitive or bargaining reasons leave a governmental body with no option other than to close the meeting. *State ex rel. Citizens for Responsible Dev. v. City of Milton*, 2007 WI App 114, ¶ 14, 300 Wis. 2d 649, 731 N.W.2d 640. When a governmental body seeks to convene in closed session under Wis. Stat. § 19.85(1)(e), the burden is on the body to show that competitive or bargaining interests require closure. *Id.* ¶¶ 6–8.

DOJ has insufficient information from your correspondence to evaluate whether the Waterford Town Board properly applied the Wis. Stat. § 19.85(1)(c) and 1(e) exemptions when going into closed session during the June 22, 2022 board meeting. It does appear that the

Town's meeting notice could have included additional, specific information about the topics to be discussed in closed session. The Town Chairperson is copied on this letter and we invite the Town Board to contact us with questions or concerns about the application of the open meetings law.

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, we nonetheless 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:

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

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

Cc: Teri J. Nicolai, Chairperson, Town of Waterford (tnicolai@townofwaterford.net)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 1, 2024

Benjamin Wolter
bfwolter@gmail.com

Dear Benjamin Wolter:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 22, 2022, in which you requested that "the Attorney General's office bring an action of Mandamus for disclosure of complete records that were requested via open records requests from the Village of Johnson Creek, WI." You wrote, "The Village has illegally withheld the majority of the records requested, excessively delayed delivery of records requests, and charged or attempted to charge excessive fees to deliver records requests."

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).

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for

a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that, "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

The public records law "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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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 (concluding an authority may not profit from its response to a public records request but may recoup all 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). An authority may <u>not</u> charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring).

The law 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, at https://www.doj.state.wi.us/sites/default/files/news-media/8.8.18_OOG_Advisory_Fees_0.pdf.

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). However, the Office of Open Government (OOG) is unable to offer you assistance regarding other laws that are outside the scope of the OOG's responsibilities and authority under the public records law.

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.

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, the Attorney General normally 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:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides

the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 4, 2024

Paul Baxter
AttyBaxter@aol.com

Dear Paul Baxter:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 25, 2023, in which you wrote, "I have seen specific issues with the Wausau School Board addressing the issue of comments by board members during a 'Public Comment' agenda item." You asked, "Has there been, or will there be, an AG opinion on board members use of a 'Public Comment' segment to make extended comments? More specifically, a majority of board members announcing their intended votes on a subsequent agenda items diring [sic] the 'Public Comment' agenda item with the result of a 'chilling effect' on any further public comments on the topic."

We searched DOJ's attorney general opinion archives, and, to date, there is no attorney general opinion on the topic of the public comment period and the Wisconsin open meetings law.

The Attorney General and DOJ's Office of Open Government (OOG) appreciate your correspondence. It is unclear whether you intended your correspondence to serve as a request for an opinion, if one did not already exist on this topic. Wisconsin law provides that the Attorney General must, when asked, provide the legislature and designated Wisconsin state government officials with an opinion on legal questions. Wis. Stat. § 165.015. The Attorney General may also provide formal legal opinions to district attorneys and county corporation counsel under certain circumstances. Wis. Stat. §§ 165.25(3) and 59.42(1)(c). The Attorney General cannot provide you with the opinion you requested because you do not meet these criteria.

While we cannot offer you an opinion, we can provide you with some general information regarding the Wisconsin Open Meetings Law. The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

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.

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

y

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

March 4, 2024

Dan Butkus
butkus_dan@yahoo.com

Dear Dan Butkus:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated February 24, 2023, in which you provided the following scenario: "A county places a resolution from a single supervisor on the agenda without going thru committee (allowed). It is properly noticed. There are no other indications on the agenda of any action other than to pass or defeat the resolution. During the meeting discussion, the Board decides to create a special committee to review the resolution." You asked, "By making a motion to create a special committee, when no indication that would be discussed is on the agenda for the resolution, is that an open meetings violation because the committee formation was not properly noticed in the agenda?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

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

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

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

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

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

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

Turning to the specific scenario you presented, a court could determine that, if the special committee to review a resolution is considered "reasonably related to" the subject matter identified in the notice, the county's public meeting notice would be sufficiently specific.

Under the open meetings law, the Attorney General and the district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, the Attorney General normally exercises this authority in cases 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:

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 4, 2024

Chris McMurray
chris.mcmurray@riversedgemw.com

Dear Chris McMurray:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 28, 2023, in which you wrote, "I am involved with my local Chamber of Commerce. As a corporation established by the town, funded by public tax money, would we be considered a quasi-governmental organization and thus bound by Open Meeting Law?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law applies to every meeting of a governmental body. A "governmental body" is defined as:

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

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

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

Based on the limited information you provided in your correspondence, DOJ cannot fully and conclusively evaluate whether the local Chamber of Commerce that you are involved with is a "governmental body" as defined in Wis. Stat. § 19.82(1), including whether it is a "quasi-governmental corporation" as discussed in the *BDADC* case, and, therefore, subject to the open meetings law.

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

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili C. Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 4, 2024

J.D. Palarski
[redacted]
Menasha, WI 54952

Dear J.D. Palarski:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 7, 2022, in which you wrote, "I filed an Open Records Request (Village of Sherwood; May 11, 2022). . . . Prior to this request I filed a related Open Records Request and got an incomplete response . . . followed by no response to a specific request for select information." You requested "State clarifications and explanations."

The DOJ 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. While a portion of your correspondence pertained to the public records law, inasmuch as you discussed requests you have made pursuant to that law, it primarily concerned matters outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding the compliance of local ordinances with state statutes, or your correspondence with municipalities and legislators. We can, however, provide you with some general information about the public records law that we hope you will find helpful.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo,* 2005 WI 120, ¶ 4,

284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

You may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin Public Records Law and maintains a Public Records Law Compliance Guide on its website.

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

y

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

March 4, 2024

Steven Smith
skshunter55@gmail.com

Dear Steven Smith:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 31, 2023, in which you wrote, "A town meeting was held about our property without notice. They did not have it on an agenda but made decisions to not renew our permits. . . . Is the town allowed to [do] what they did? Seems like we should [h]ave been informed of a meeting involving our property."

The DOJ 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. While a portion of your correspondence pertained to the open meetings law, it primarily discussed a matter outside the scope of the OOG's responsibilities, specifically the notice procedures for town meetings, found at Wis. Stat. §§ 60.11 to 60.12. As a result, we are unable to offer you assistance or insight regarding your town's permit procedure or its requirements for meeting notices. We can, however, 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 publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

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

The open meetings law also provides timing for releasing agendas, as well as the level of specificity required in agenda items for open meetings, in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of every meeting of a governmental body must be provided at least 24 hours prior to the commencement of such a meeting. Wis. Stat. § 19.84(3). If, for good cause, such notice is impossible or impractical, shorter notice may be given, but in no case may the notice be less than two hours in advance of the meeting. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

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

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

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

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:

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCBF:lah

y

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

March 4, 2024

Pat Stanislawski
zpatz21@yahoo.com

Dear Pat Stanislawski:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated March 27, 2023, regarding "problems with [your] local Town Officials." You alleged "[t]he Clerk is lying on the Board minutes, then when she is caught, she changes it without Board approval, then when she is caught doing that, she rips them off of our town website and puts up a notice . . . saying….Meeting minutes will not be put up on the website until they are approved by the Board." You stated, "There are also little rules being made unilaterally like…keeping public comment to 3 minutes. Yes, they have the authority to do this but the Chairman cannot act alone making this decision or can he?"

The DOJ 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. While a portion of your correspondence pertained to the open meetings law, it primarily discussed matters outside the scope of the OOG's responsibilities, specifically town meeting rules at Wis. Stat. §§ 60.10 to 60.16. As a result, we are unable to offer you assistance or insight regarding your concerns regarding the alleged calling of a "'special' meeting illegally," salary increases, and garbage collection fees. We can, however, provide you with some general information about the open meetings law 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).

In your correspondence you wrote, "they called a 'special' meeting illegally. That is, by law, there are only 3 ways to call a special meeting and they did none of those." If you are referring to how the meeting was noticed, 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. For example, we understood your correspondence to refer to town meeting requirements, which are found at Wis. Stat. §§ 60.11 to 60.12 and may include notice provisions in addition to those required by 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. *Id.* Furthermore, the law requires separate public notice for each meeting of a governmental body at a time and date "reasonably proximate to the time and date of the meeting." Wis. Stat. § 19.84(4).

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

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).

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). However, the Attorney General normally exercises this authority in cases 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:

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Dennis Collins
dcollins5@wi.rr.com

Dear Dennis Collins:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 3, 2023, in which you asked, "If a private school and/or school district receives state tax dollars through the choice program, are their board meetings required to follow open meeting laws?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law applies to every meeting of a governmental body. A governmental body is defined as:

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

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

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

DOJ has insufficient information to determine whether the private school is a quasi-governmental corporation as defined in Wis. Stat. § 19.82(1). Public funding, such as "state tax dollars through the school choice program," is one of the five *BDADC* factors described above. Making this determination for a particular private school would require an analysis of all five *BDADC* factors described above.

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:

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 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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 5, 2024

Beverly Hamilton-Williams
beverlywilliams200@yahoo.com

Dear Beverly Hamilton-Williams:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 17, 2023, in which you wrote, "Milwaukee Public Schools violated my right to speak at a public budget meeting on May 16, 2023 by interrupting my testimony and cutting off my mike when I was discussing placing the Truancy Abatement Program in Milwaukee Public Schools." You also wrote, "The MPS Board also did not provide information for parents to attend the budget meeting through robo calls or even mailings." Additionally, your correspondence raised concerns about alleged discrimination against you by the MPS Board in terms of its response to your comments.

The DOJ 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. Potential discrimination and equity issues are, therefore, outside of this scope. However, we will discuss the open meetings law-related concerns you raised and provide information 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).

In your correspondence, you first discussed how the Milwaukee Board of School Directors (MPS Board) handled your testimony about a Truancy Abatement Program. 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. The open meetings law allows a governmental body to set aside a portion of a meeting for public comment, but 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.

Though we lack sufficient information about the content of the meeting notice and conduct of the meeting to know why the MPS Board interrupted and discontinued your testimony, if the Truancy Abatement Program did not appear on the meeting notice for that particular budget meeting, the MPS Board may have decided to limit discussion of that subject. In such instances, clear communication between a governmental body and members of the public who wish to make their voices heard may be advisable.

In your correspondence, you also discussed a concern with how the MPS Board gave notice of its May 16, 2023, budget meeting to members of the public. 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.

It is important to note that notice to the public, notice to news media, and notice to the official newspaper are separate requirements. First, as to the public notice, communication from the chief presiding officer of a governmental body or such person's designee shall be made to the public using one of the following methods: 1) Posting a notice in at least 3 public places likely to give notice to persons affected; 2) Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's Internet site; or 3) By paid publication in a news medium likely to give notice to persons affected. Wis. Stat. § 19.84(1)(b). If the presiding officer gives notice in the third manner, he or she must ensure that the notice is actually published.

Second, as to the notice to the news media, the chief presiding officer must give notice of each meeting to members of the news media who have submitted a written request for notice. Wis. Stat. § 19.84(1)(b); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶¶ 3–4, 7, 278 Wis. 2d 388, 692 N.W.2d 304. Although this notice may be given in writing or by telephone, it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. *See* 65 Op. Att'y Gen. Preface, v–vi (1976); 65 Op. Att'y Gen. 250,

251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. *See* 77 Op. Att'y Gen. 312, 313 (1988).

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

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).

From your correspondence, we lack sufficient information know what actions the MPS Board took to provide public notice of its May 16, 2023, budget meeting, and therefore are unable to conclude whether the MPS Board violated the open meetings law's notice provisions.

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Paul Biff Hansen
biffer@milwpc.com

Dear Paul Biff Hansen:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 26, 2023, in which you wrote, "As an Elected member of the Manitowoc Public School District I am looking for help with 'closed session question.' The School District does not seem to use the rules we have on for the County Board I serve on."

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

In your correspondence, you did not provide details regarding your "closed session question." Therefore, DOJ has insufficient information to evaluate your specific concerns. However, we can provide you with some general information regarding closed sessions which we hope you find helpful.

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, of 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.

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

If you have additional questions, you may also contact the OOG's Public Records-Open Meetings (PROM) Help Line at (608) 267-2220. Thank you for your correspondence.

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 5, 2024

Stavros Iliopoulos, #687345
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768

Dear Stavros Iliopoulos:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 14, 2023, regarding the denial of your public records request to the Oneida County Jail for "a copy of all policies and guidelines to the Oneida County Jail's complaint process and remedies." You asked DOJ to contact the Oneida County Sheriff's Office regarding your request.

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).

First, please note that as an individual who is currently incarcerated, your right to request records under the public records law is limited to records that contain specific references to yourself or your minor children and are otherwise accessible to you by law. *See* Wis. Stat. § 19.32(1c) and (3). If the records you requested pertain to you or your minor children, you may request them pursuant to the public records law. Based on the information provided in your correspondence, it appears that, under the public records law, you are not entitled to request the records you seek at this time as explained in the Sheriff's Office's denial letter.

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Monte Kirk
montekirk@gmail.com

Dear Monte Kirk:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated June 2, 2022, in which you wrote, "I have attempted to contact the City of Milwaukee Fire and Police Commission Custodian of records to obtain the requested open records request with no response. I wish to file a formal complaint against the City of Milwaukee Fire and Police Commission."

While the Attorney General is authorized to enforce the Wisconsin Public Records Law, the Attorney General usually exercises this authority only in cases presenting novel issues of law that coincide with matters of statewide concern. Because your correspondence does not present a novel issue of law, we respectfully decline to pursue an action for mandamus on your behalf. However, we can provide additional information about the Wisconsin Public Records Law and your rights as a records requestor, should you remain dissatisfied with the City of Milwaukee Fire and Police Commission's response to your request.

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. The records custodian must perform the balancing test

analysis on a case-by-case basis. *Id.* ¶ 62. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

Pursuant to Wis. Stat. § 19.35(4)(b), "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." Specific policy reasons, rather than mere statements of legal conclusion or recitation of exemptions, must be given. *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 1084, 473 N.W.2d 538 (Ct. App. 1991); *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824-25, 472 N.W.2d 579 (Ct. App. 1991). In every written denial, the authority must also inform the requester that "if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney." Wis. Stat. § 19.35(4)(b).

The public records law "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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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 that either the Attorney General or the district attorney of the county where the record is found[1] file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). As discussed above, the Attorney General must respectfully decline to pursue an action for mandamus on your behalf.

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:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

[1] In Milwaukee County, the Milwaukee County Office of Corporation Counsel—not the district attorney—serves as legal counsel for the purposes of enforcement of the public records law.

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Darla Meyers
meyersdm1@baldwin-telecom.net

Dear Darla Meyers:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 17, 2023, in which you wrote, "On December 1, 2022, I witnessed an open meeting violation at the St. Croix County Government Center with the Public Protection and Judiciary Committee." You stated, "Three of the five voting members were outside the bathroom hallway discussing the agenda item that related to the draft Second Amendment Resolution. The discussion was related to the night-before e-mail Chair Robert Feidler sent to the Committee." You wrote, "I have drafted an open meetings complaint to send to the St. Croix County District Attorney Karl Anderson. . . . If Anderson doesn't accept the complaint based on a conflict of interest, what are my options?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

A 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. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting." Wis. Stat. § 19.82(2). The members of the governmental body may overcome this presumption by proving that they did not discuss any subject that was within the realm of the body's authority. *See* Dieck Correspondence (Sept. 12, 2007).

Because of the rebuttable presumption just discussed, it is possible that a reviewing court could find that the three voting committee members' gathering outside of the meeting room on December 1, 2022, constituted a meeting in violation of the open meetings law. If a court did so find, the three members would have an opportunity to rebut the presumption by proving that they did not discuss any matter within the Public Protection and Judiciary Committee's authority. On the whole, DOJ has insufficient information to evaluate whether the discussion by three members of the Public Protection and Judiciary Committee violated the open meetings law. However, we hope that the information provided above was helpful.

The open meetings law provides several avenues for individuals to seek enforcement actions against government bodies alleged to have violated it. The Attorney General and county district attorneys have authority to enforce the law. Wis. Stat. § 19.97(1). However, the Attorney General normally exercises this authority in cases 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). In your correspondence you stated that you had drafted an open meetings law complaint to file with the St. Croix County District Attorney. If the district attorney refused or otherwise failed 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:

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.

Thank you for your correspondence. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals' open government questions. The PROM telephone number is (608) 267-2220.

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Darla Meyers
meyersdm1@baldwin-telecom.net

Dear Darla Meyers:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated August 25, 2023, in which you wrote, "I filed an open records request with the City of Hudson . . . I had narrowed my request in order to avoid paying too much for information that should be available to the public. The estimated cost for the search was provided at over $1,000. It appears as if the outside IT provider would be charging $220/hour. I find this cost unreasonable. Please advise me as to what my options would be."

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). In this case, the City of Hudson is the "authority" from which you requested "records."

The public records law does allow an authority to charge fees for certain costs incurred during the fulfillment of public records requests. 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 (concluding an authority may not profit from its response to a public records request but may recoup all 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). An authority may not charge for the time it takes to redact records. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.* ¶ 76 (Roggensack, J., concurring). Likewise, if an authority uses a

contractor to assist in processing the authority's public records requests, the authority cannot pass along the contractor's redaction costs to the requester. The costs of redaction are not a permissible fee under the public records law, no matter if the fees are incurred by the authority itself or by the contractor.

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). "Locating" a record means to find it by searching, examining, or experimenting. Subsequent review and redaction of the record are separate processes, not included in location of the record, for which a requester may not be charged. *Milwaukee Journal Sentinel*, 2012 WI 65, ¶ 29 (Abrahamson, C.J., lead opinion). Only actual, necessary, and direct location costs are permitted. 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/office-open-government/oog-advisories-and-attorney-general-opinions).

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). However, the Office of Open Government (OOG) is unable to offer you assistance regarding other laws that are outside the scope of the OOG's responsibilities and authority under the public records law.

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.

Based on the information you provided in your correspondence, the City of Hudson proposed charging fees for locating and reviewing requested records. Fees in the amount of actual, necessary, and direct costs to locate records are permitted so long as those costs are $50.00 or more. However, and depending on the circumstances of this matter, it is possible that a reviewing court could find that costs associated with subsequent review and redaction of records would not be permissible. The City of Hudson's interim Administrator is copied on this letter to make them aware of your concerns and alleviate any possible misunderstanding about what fees are permissible under the public records law. I invite them to contact our office should they wish to discuss your request and concerns.

The public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a). To obtain a writ of mandamus, the requester must establish

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

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

You may also wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Mike Johnson, interim Administrator, City of Hudson
(via email: mjohnson@hudsonwi.gov)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

March 5, 2024

Joseph Pilkington
japilkin@mtu.edu

Dear Joseph Pilkington:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated July 8, 2023, in which you asked, "As a condition of attending a public meeting am I required to verbally or otherwise identify myself? I notice there are typically sign-in sheets at county, city, village, and town meetings. Am I required to sign these sheets?" You also asked, "Am I required to identify myself by name and address if permitted to speak during an open session of a public meeting?"

The Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

The open meetings law itself does not require attendees of or participants in open meetings to sign in or identify themselves. It also does not prohibit sign-in or identification requirements for participants. The open meetings law governs public access to and notice of meetings of governmental bodies, and also governs certain recordkeeping requirements, but the open meetings law does *not* dictate all procedural aspects of how governmental bodies run meetings.

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). Unless other statutes specifically apply, 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, and members of the public may also be asked to leave if they become disruptive or otherwise

interfere with the conduct of the meeting. *See, e.g.,* Nix Correspondence (Oct. 29, 2002); Fechner Correspondence (Mar. 22, 2018).

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

Thank you for your correspondence. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you have additional questions or concerns, DOJ maintains a Public Records Open Meetings (PROM) help line to respond to individuals' open government questions. The PROM telephone number is (608) 267-2220.

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608 266-1447
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2023

Denise Ruberg
druberg82@hotmail.com

Dear Denise Ruberg:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated September 25, 2023 and February 5, 2023, regarding your public records request to the Superior Police Department for items, specifically photos and text messages, from a closed investigation. The police department provided you with redacted records. You asked for DOJ's assistance in obtaining unredacted records.

Your correspondence references the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA applies to federal agencies and helps ensure public access to records of federal agencies. In Wisconsin, the state counterpart to FOIA is the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority."

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo,* 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. *See* 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, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

However, I am copying the Superior Police Department on this letter to make them aware of your concerns.

You may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance

in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Superior Police Department (via email: policedept@ci.superior.wi.us)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608 266-1447
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Casey Schiche
cschiche@wi.rr.com

Dear Casey Schiche:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 31, 2023, in which you wrote, "How do I file a complaint on the City of Lake Geneva for not providing information requested under FOIA. This is the 2nd time in 1yr that the City clerk stated she did not have documents that were requested."

Your correspondence references the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA applies to federal agencies and helps ensure public access to records of federal agencies. In Wisconsin, the state counterpart to FOIA is the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority."

Records are presumed to be open to public inspection and copying, but there are exceptions. Wis. Stat. § 19.31. Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by the balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor the common law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This balancing test determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo,* 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551. If a records custodian determines that a record or part of a record cannot be disclosed, the custodian must redact that record or part of that record. *See* Wis. Stat. § 19.36(6).

If an authority denies a written request, in whole or in part, the authority must provide a written statement of the reasons for such a denial and inform the requester that

the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. *See* Wis. Stat. § 19.35(4)(b).

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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot fulfill a request for a record if the authority has no such record. While the public records law does not require an authority to notify a requester that the requested record does not exist, it is advisable that an authority do so.

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, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

You may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides

the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 5, 2024

Anthony Strugariu
a.strug3030@gmail.com

Dear Anthony Strugariu:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 8, 2023, in which you wrote, "I was denied public information and wanted some help on getting my information. Was told I can contact the Attorney general's office."

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).

You may wish to use the public records law to obtain the information you seek by submitting a public records request to the appropriate authority. When submitting a public records request, a requester should take care to ask for *records* containing the information they seek, as opposed to simply asking a question or asking for information. This is important because 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, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). An authority is not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). Additionally, 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 order to submit a public records request, there are no "magic words" that are required, and an authority may not require that a requester fill out a specific form in order to submit a request. One may submit a request verbally or in writing. A request for records is sufficient if it is directed to an authority and reasonably describes the records or information requested. Wis. Stat. § 19.35(1)(h). Under the public records law, a request need

not be made in person, and generally, a requester is not required to identify themselves or to state the purpose of the request. *See* Wis. Stat. § 19.35(1)i ("Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request").

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 such a denial and inform the requester that the determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the attorney general or a district attorney. *See* 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). In your correspondence, you included correspondence from Washington County District Attorney Mark Bensen to you, in which District Attorney Bensen declined to bring a mandamus action on your behalf. The Attorney General is authorized to enforce the public records law; however, the Attorney General normally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

You may wish to contact a private attorney regarding your matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney's fees. You may reach the service using the contact information below:

Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666
http://www.wisbar.org/forpublic/ineedalawyer/pages/lris.aspx

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Karla Vehrs
vehrsk@ballardspahr.com

Charles Tobin
TobinC@ballardspahr.com

Dear Karla Vehrs and Charles Tobin:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated December 22, 2022, in which you wrote that your client, WMTV NBC15 (WMTV) has "been repeatedly frustrated in their efforts to obtain timely release of public records from Madison Metropolitan School District" (MMSD). You wrote, "WMTV respectfully requests [DOJ] assistance in preventing MMSD's further flagrant violations of its clear obligations under the Open Records Law."

The Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

The public records law does not require a response to a public records request within a specific timeframe. In other words, after a request is received, there is no set deadline by which the authority must respond. However, the law states that upon receipt of a public records request, the authority "shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." Wis. Stat. § 19.35(4)(a). A reasonable amount of time for a response "depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations." *WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, 751 N.W.2d 736; *see Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 85, 362 Wis. 2d 577, 866 N.W.2d 563 (an authority "can be swamped with public records requests and may need a substantial period of time to respond to any given request").

The Office of Open Government encourages authorities and requesters to maintain an open line of communication. This helps prevent misunderstandings between an authority and a requester. For example, if it becomes apparent to an authority that a public records request may require a longer response time, it may be prudent for the authority to send the requester a letter providing an update on the status of the response and, if possible, indicating when a response might be anticipated. Similarly, if an authority receives an inquiry from a requester seeking an update on the status of the request, it is advisable for the authority to respond to the requester with an update. We have contacted Madison Metropolitan School District to discuss this matter.

The public records law does provide several remedies for a requester such as your client, who may be 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, the Attorney General normally 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, we nonetheless respectfully decline to pursue an action for mandamus on your behalf.

The Attorney General and the Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. DOJ offers several open government resources through its website (https://www.doj.state.wi.us/office-open-government/office-open-government). DOJ provides the full Wisconsin public records law and maintains a Public Records Law Compliance Guide on its website.

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

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

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
BehmL@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

March 5, 2024

Amy Warmenhoven
abwarmenhoven@gmail.com

Dear Amy Warmenhoven:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated April 16, 2023, in which you wrote, "I feel uncomfortable with Green Bay Crime Reports being allowed to monetize on the use of my arrest photo as part of their blog." You asked, "How do I get the image removed from Blogger and my business' Google results? Is this truly allowed under the open public records law?"

The DOJ 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, for the most part, outside this scope. Therefore, we are unable to offer you assistance regarding your concerns about revenue generation from an arrest photo by a blog, or how the photo can be removed from the Internet. We can, however, provide information regarding the public records law's application to revenue-generating platforms like blogs, and to records such as arrest photos or mugshots.

The public records law authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority" (i.e., a governmental agency or body). 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). As such, the general rule regarding public records is that, "[e]xcept as otherwise provided by law, any requester has a right to inspect any record." Wis. Stat. § 19.35(1)(a). "Record" is defined broadly, to include "[a]ny material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, … which has been created or is being kept by an authority" in connection with an agency or governmental body's official function. Wis. Stat. Wis. Stat. § 19.32(2), 72 Op. Att'y Gen. 99, 101 (1983).

When applying this broad definition, Wisconsin courts have consistently held that documents such as daily arrest logs or police "blotters" at police departments are records that must be disclosed in response to a request for the same. *Newspapers, Inc. v. Breier*, 89Wis.2d

417, 440, 279 N.W.2d 179 (1979). Similarly, state law views arrest photos – "mugshots," in common parlance – as public records subject to disclosure upon request. *See, e.g.., State ex rel. Borzych v. Paluszcyk*, 201 Wis.2d 523, 525-527, 549 N.W.2d 253 (Ct. App. 1996) ("[t]he mug shot was a record within the meaning of § 19.35(2), stats."). Because mugshots are public records, they must be made available to requesters upon demand, and they may be made available by a law enforcement agency or other governmental body as a matter of course.

Additionally, the public records law does not require a requester to state or defend the purpose of the request for records. Wis. Stat. § 19.35 (1)(h), (i). Where access to a record is determined by statute or court decision, as is the case with mugshots, custodians do not consider requester purpose before releasing records, and generally, the identity of a requester and the purpose of a request are not factors in the balancing test analysis.

In all, the public records law gave Green Bay Crime Reports the right to request and access arrest photos like yours. The motive of Green Bay Crime Reports in making such a request – even if its motive is monetary – is not relevant because Wisconsin courts have declared that mugshots are records subject to disclosure pursuant to the public record law. *Borzych*, 201 Wis.2d at 524.

Whether or how Green Bay Crime Reports, "Blogger," or search engines can be made to remove arrest photos so that they do not appear on websites or in web search results is beyond OOG's scope. As such, we are unable to provide information on those topics. 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:

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, 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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 6, 2024

Christa Poeschel
christa.poeschel@gmail.com

Dear Christa Poeschel:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 4, 2023, in which you wrote:

> I live in the Town of Kinnickinnic, WI, part of River Falls, WI. I would like to find out how to file a complaint and have someone do something about my Town Board and Plan Commission. They have violated multiple open meetings laws . . . . The Chair, Jerry Olson, has told people to shut up and be quite [sic] during public comment. Last night at the Town Board meeting there was a business item placed on the agenda that was not published. They are publishing meeting agendas in a different County (Pierce instead of St. Croix). The Town Clerk is publishing agendas after meetings have already happened. They have even spoken about not allowing the public at meetings.

The DOJ 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. 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).

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 otherwise 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.

There is insufficient information to determine whether the Town Chair, Jerry Olson, violated the open meetings law through his alleged conduct. We are unable to determine whether Chair Olson's alleged conduct may have violated another state law or a town ordinance.

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

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

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

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. As your matter does not appear to present novel issues of law that coincide with matters of statewide concern, we respectfully decline to file an enforcement action on your behalf at this time. However, the Kinnickinnic Town Board is copied on this letter to make them aware of your concerns, and we invite them to contact us to discuss your concerns.

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:

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,

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

cc: Kinnickinnic Town Board (via email: kinniclerk@icloud.com)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

March 6, 2024

Sandi Tretow
sanditretow@yahoo.com

Dear Sandi Tretow:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated November 29, 2023, in which you wrote, "I would like to know for a municipality conducting its annual Joint Review Board meeting for its TID if the local government can try to remove the public member at the annual meeting. I am the public member. . . . I wish to remain on the board and serve. From what I read in the statute, that the annual meeting is about reviewing the financials etc. . . . I think this is an illegal agenda item. Please advise."

The DOJ 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. Your correspondence pertains to municipal TID administration and the procedural conduct of a meeting, the specific details of which are outside the scope of the open meetings law and, therefore, outside the scope of the OOG's responsibilities. As a result, we are unable to offer you assistance or insight regarding your concerns.

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).

Additionally, no duly elected or appointed member of a governmental body may be excluded from any meeting of such body, nor may a member of the body be excluded from any meeting of a subunit of that body unless the rules of the body provide to the contrary. Wis. Stat. § 19.89.

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,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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

Lili Behm
Assistant Attorney General
behml@doj.state.wi.us
(608) 266-1447
TTY 1-800-947-3529
FAX (608) 267-2779

March 6, 2024

Terry Wood
woodterrya@gmail.com

Dear Terry Wood:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated October 12, 2023, in which you asked, "Does a non profit 501c3 need to follow open records law? We are a thrift shop in Platteville, Wi."

As you may know, the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, authorizes requesters to inspect or obtain copies of "records" created or maintained by an "authority." The purpose of the public records law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The Wisconsin public records law defines an "authority" as any of the following having custody of a record:

> a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1). Only an entity that falls within this definition of "authority" is subject to the provisions of the public records law.

Based on the limited information you provided in your correspondence, DOJ cannot make a definitive determination as to whether the thrift shop in question would be considered an authority. Generally, however, a non-profit organization such as you describe would not fit within this definition.

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 public records law and maintains a Public Records Law Compliance Guide on its website.

DOJ is dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

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

Sincerely,

Lili Behm

Lili C. Behm
Assistant Attorney General
Office of Open Government

LCB:lah