

Accessing Government:

How difficult is it?

AN ANALYSIS OF
OPEN GOVERNMENT LAWS
IN THE MIDWEST



Excerpted Portions: Wisconsin

For full report, please visit www.citizenadvocacycenter.org or www.midwestdemocracynetwork.org

ABOUT THE CITIZEN ADVOCACY CENTER

The Citizen Advocacy Center (Center) is an award-winning, non-profit, non-partisan community legal organization based in the suburbs of Chicago. Founded in 1994, the Center's mission is to build democracy for the 21st century by strengthening the public's capacities, resources and institutions for self-governance.

Community lawyers at the Center help citizens and community groups address self-identified issues of public concern through providing resources and training in how to use civic tools, the law, community organizing, coalition building, and the media to affect government decision-making.

The Center's work has a regional and statewide impact due to our focus on identifying systemic reforms that increase government accountability, accessibility, and transparency as well as citizen participation in government affairs. Additionally, the Center monitors government agencies for abuse of power and anti-democratic policies, and, only when necessary, engages in president setting federal and state litigation to hold government agencies accountable for abuse of power.

ABOUT THE MIDWEST DEMOCRACY NETWORK

The Citizen Advocacy Center is a member of the Midwest Democracy Network, an alliance of Midwest state-based civic and public interest organizations, academic institutions, and policy and legal experts.

Members of the Midwest Democracy Network share a commitment to fundamental democratic values and principles, especially those that speak to honesty, fairness, transparency, accountability, citizen participation, competition, respect for constitutional rights and the rule of law, and the public's need for reliable information. They believe that such principles must be continuously reinforced and zealously protected against those who see politics as a means to promote narrow interests rather than the common good.

Toward these ends, members seek to reduce the influence of money in politics; keep courts fair and impartial; promote open and transparent government; create fair processes for drawing congressional and legislative districts; guarantee the integrity of our election systems; promote ethical government and lobbying practices; and democratize the media.

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ANALYSIS OF OPEN GOVERNMENT LAWS

Executive Summary

“A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy—or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives.”

—James Madison, Letter to W. T. Barry, 1822

Strong open government laws that mandate transparency in conducting the people’s business are essential components of a healthy democracy. The ideals of a government that is of the people, by the people, and for the people require that the public have, to the fullest extent possible, the capacity to access the governmental decision-making process and documents that are created and maintained with public tax dollars.

Broad access to government ensures the public’s capacity to play a role in the democratic process and provides a mechanism by which the public can knowledgeably discuss issues of public concern, make informed judgments as to the actions of public officials, and monitor government to ensure that it is acting in the public interest.

Both the federal government and all individual states have open government laws. These laws uphold the ideals of transparency in government and mandate liberal access to government documents and government meetings. By providing public access to government meetings and robust access to information regarding government affairs, open government statutes are cornerstone laws that ensure and protect the free flow of information from government to the people.

However, state open government laws have statutorily weak features that must be reformed. Moreover, the implementation of state open government laws suffers from inconsistent governmental responses, despite strong public policy statements which are supposed to provide a framework to interpret statutory provisions. While public bodies have the legal burden to ensure compliance with open government laws, more often than not compliance rests on the shoulders of the public.

Our democracy is weakened when government can circumvent transparency based on ineffective oversight mechanisms, a lack of penalties or implementation of penalties, a lack of training that leads to inadvertent violations, excessive fees that make information inaccessible, ineffective policies that fail to address the integration of technology in the businesses of governing, or few resources available to provide assistance to people when government is resistant to permitting proper access or disclosure. These are just a few of the barriers that impede public participation.

A healthy democracy requires that open government barriers be identified, dismantled, and replaced with effective statutory language and institutional protocols that ensure citizen participation and government operation in the light of day.

To address systemic barriers that chill public participation and access to government, the Citizen Advocacy Center (Center) conducted a systemic overview of open government laws in the states of Michigan, Ohio, Illinois, Wisconsin, and Minnesota with the goals of evaluating the provisions and implementation of the statutes.

In executing this project, the Center reviewed the relevant statutes and more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state's respective strengths and weaknesses. The study serves as a valuable resource for policy makers, good government organizations, the media, and citizens who regularly use open government laws.

Specifically, the Center analyzed how the public in each state is entitled to participate in the democratic process and to what extent policy goals of mandating transparency and accessibility to government operations are achieved.

With regard to the Freedom of Information Act (FOIA) statutes, the Center focused on issues such as:

- Response time to requests;
- Appeal time and procedures;
- Fees and costs associated with requests;
- Fines and penalties for lack of responsiveness by a government body;
- The frequency with which available fines and penalties have been implemented;
- The extent of exempt information from public records requests;
- The presence of government resources to act as an ombudsman; and
- Provisions that mandate access and disclosure of public records created via the Internet.

With regard to the Open Meetings Act (OMA) statutes, the Center reviewed:

- Public notice and agenda requirements;
- Provisions to address the use of the Internet and other forms of electronic communications to conduct meetings;
- Fines and penalties;
- The frequency with which available fines and penalties are implemented; and
- The extent to which a public body can close public meetings.

During the course of completing the Midwest Open Government Project, four major themes surfaced.

The first is that all of the surveyed Midwestern states suffer from a lack of enforcement implementation. In every state surveyed except Illinois, public information laws have some kind of fine or penalty provision to deter non-compliance. While fine and penalty schemes are available, a review of case law indicates that they are rarely enforced in the states where present.

With respect to open government laws, every state statute includes a variety of enforcement and penalty provisions, some of which include criminal charges and removal from office. Despite strong provisions, few states implement their statutory provisions to hold public bodies accountable. The lack of implementation of enforcement provisions has a detrimental ripple effect: public bodies are less likely to be responsive to requests for public information and more likely to inappropriately utilize exemption provisions. In addition, government bodies are less likely to hold open government meetings.

The second theme is that no state surveyed has a statutorily created entity with enforcement powers specifically dedicated to ensuring compliance with sunshine laws. It is laudable that every state examined had either state resources or non-profit organizations available to the media, public officials, and the general public to navigate respective open government statutes, provide training, and advocate for more transparency, accountability, and accessibility of government. Despite these resources and considering the systemic lack of enforcement among open government laws in general, a statutorily created office with enforcement powers would substantially increase the likelihood that governmental bodies will comply with open government laws.

The third theme is the lack of mandated training for public officials and public employees on appropriate utilization of open government statutes. Ohio was the only state surveyed that requires every elected official, or a designee, to receive three hours of training regarding use of that state's open records law during every term in office. Mandatory training for those who fall under the purview of open records and open meetings laws is essential to promoting open government. Required training increases the capacity of public officials and employees to comply with the law and offers a degree of accountability.

The fourth theme is that participatory opportunities for the public during open meetings are absent. The preamble of each state's open meetings statute identifies broad goals as ensuring transparency in the government decisionmaking process and guaranteeing that the public has access to full and complete information regarding the affairs of government.

Beyond having the capacity to access government information and observe how government operates, a healthy democracy requires an engaged public that has the opportunity to publicly comment on issues that public officials intend to take action on. Michigan is the only state surveyed that requires public bodies to provide an opportunity for the public to speak at public meetings, within appropriate restrictions. This is a tremendously important element that is conspicuously absent in other states.

In addition to the major themes identified above, the Midwest Open Government Project brought to light interesting aspects of each state's open government laws. For example:

- Ohio's OMA has outstanding provisions within the statute and remarkable fines and penalties for non-compliance, however, the statute does not apply to home rule units of government per the Ohio Constitution;
- In Illinois, the notice and minutes provisions of the OMA are the most stringent of the five statutes, but its FOIA was the only state surveyed that fails to have any kind of penalties or fines for violations. In addition, Illinois's statute has the longest list of exemptions by far, making the statute perplexing;
- With respect to Michigan, while its OMA mandates public comment opportunity at public meetings and its FOIA covers private entities that receive more than half of its funding from a government agency, the Governor's office, Lieutenant Governor's office and legislature are exempt from the statute. In addition, Michigan has the most stringent requirements regarding the imposition of fees for searching and compiling public records and the shortest statute of limitations for a lawsuit to be filed under OMA when issues of expenditures are at stake;

- Wisconsin, while considered to have fairly strong open government laws, is devoid of an administrative appeals process for when requests are denied and lacks a firm statutory deadline by which public bodies must respond to requests for records. The lack of a firm deadline results in unjustified delays in accessing government information; and
- Minnesota places a high priority on protecting the privacy of a requestor of public records, as well as an individual who may be the subject of a request. The high sensitivity to protecting individual privacy coupled with many regulations, leads to tremendously complex and confusing open records laws. The multi-tiered system regarding the production of government documents renders the statutes virtually unusable to general public. Moreover, public bodies in Minnesota are not required by law to provide public notice of meetings, agendas detailing what action public bodies will take at such meetings, or that any minutes beyond the recording of votes be taken.

As the Center completed its broad overview of each state's statutory provisions, we completed comparative analyses highlighting positive and negative anomalies that influenced our eventual reform recommendations for each state. In addition to the individual state policy reports that provide an overview of each state's open government laws and the identification of specific strengths and weaknesses, the Center drafted ten model statutes that are tailored to each state that good government advocates can use to begin the conversation about how to advance specific reforms.

Additionally, the Center has produced citizen guides that translate dense legalese into an easily understandable format for the public. The combination of the policy reports, model legislation, and citizen guides results in a comprehensive open government tool box that can be effectively deployed to advance systemic democratic protocols. The Midwest Open Government Project is a substantial endeavor embarked on by the Center that has produced significant results to help strengthen democracy and build the capacity of the public to participate and affect government decision-making.

WI
WISCONSIN



The very first laws adopted after Wisconsin officially became a state in 1849 provided for public access to the meetings and records of county government. From its origins, Wisconsin has had a long history of promoting open government. In 1981, the Wisconsin State Legislature enacted the Public Records Law (PRL), that in Section 19.31 provides: “In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Within specified limitations, PRL allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office.

In 1959, the Wisconsin State Legislature enacted the Open Meetings Law (OML) and made substantive revisions in 1973 and 1975. Section 1981(1) of OML declares that: “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.”

OMA promotes public participation in local government and requires public bodies to hold open meetings, provide the public with adequate notice of meeting times so that citizens may freely attend, and keep records of public meetings.

The PRL and OML have numerous strengths but the most impressive aspect of Wisconsin's open government laws is the range of penalties available for violations. The PRL includes substantial penalties, such as punitive damages and criminal penalties for destruction, damage, removal or concealment of public records with intent to injure, defraud, or falsify public records. The OML provides forfeiture, mandamus, injunction and declaratory judgments as remedies and subjects public officials who violate the law to fines between \$25 and \$300 for each violation.

Wisconsin's steep penalties demonstrate the state's strong commitment to open government and its willingness to hold those accountable who fail to properly comply with the law. However, both laws lack administrative channels for contesting a violation, leaving expensive and cumbersome litigation as the primary option for relief.

Additionally, the PRL allows a public body to charge for search costs for public records in some cases, and enforcement of the OML is reportedly weak. Reports suggest that the agencies responsible for the enforcement are unwilling to pursue open meetings complaints and individuals must often initiate litigation to avail themselves of their rights. Additionally, while public notice is required for meetings subject to the OML, it is a mere 24 hours. Furthermore, detailed meeting minutes are not required under law.

While the PRL and OML are strong, additional reform is needed to improve access to government in Wisconsin. The following provides an analysis of the strengths and weaknesses of the PRL and OML in Wisconsin and a summary of the laws' main components. Copies of model versions and citizen guides of both statutes are available by contacting the Citizen Advocacy Center.

ANALYSIS OF WISCONSIN'S

Public Records Law

STRENGTHS

of Wisconsin's Public Records Law

The broad coverage of Wisconsin's PRL is its greatest strength. Notably, the PRL provides one of the strongest policy declarations in the Wisconsin statutes. Wis. Stat. § 19.31. The stated policy of the law is to give the public "the greatest possible information regarding the affairs of government." *Id.* Accordingly, the PRL must "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." *Id.* The PRL further provides that "denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." *Id.* Cases interpreting the PRL adhere to the aforementioned public policy objectives by strictly construing exemptions and generally ruling in favor of disclosure.

Penalties for violations of the PRL are substantial and therefore encourage compliance. Mandatory attorneys' fees, damages of at least \$100 and other actual costs are available to a requestor who prevails in whole or in substantial part in a mandamus. Moreover, punitive damages of up to \$1,000 can be assessed against a records custodian responsible for an arbitrary and capricious delay or denial of a public records request. In addition, criminal penalties may be imposed for destruction, damage, removal or concealment of public records with intent to injure, defraud, alter or falsification of public records.

Wisconsin's steep civil and criminal penalties demonstrate the state's strong commitment to open government and its willingness to hold accountable those who fail to properly comply with the law.

A 2003 amendment to the PRL simplified the law as it pertains to individuals identified in public records and advanced transparency. The amendment addressed the cumbersome requirements created by *Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W.2d 699 (1996), in which the Wisconsin Supreme Court established procedural steps that custodians must take before releasing public records implicating the privacy or reputational interests of any individual identified in the records. In *Woznicki*, the Supreme Court held that before releasing a record implicating such interests, a district attorney must notify the subject of the record and give him or her a reasonable opportunity to seek court review of the decision to release the record. *Id.* at 185.

The 2003 amendment explicitly limited the categories of records subject to *Woznicki* notice to three discrete categories. It also established reasonable time limits for the *Woznicki* process. Wis. Stat. § 19.356. Thus, the amendment curtailed efforts by some government authorities to delay or deny the disclosure of public records requests based on *Woznicki* and improved the public's right to access public records.

In addition, the PRL protects a requestor's privacy rights by explicitly stating that a requestor does not need to provide his or her identity or the reasons for which records are requested. Extending the privacy concerns to a requestor, as well as the subject of a request, demonstrates consistency within the statute. Moreover, specific provisions in the statute that prohibit a public body from asking why records are sought promote accessibility and lessen the likelihood that records will be withheld because of how an individual intends to use them.

Wisconsin has remarkable open government resources for the public. The Wisconsin Attorney General is committed to providing open government training seminars conducted by attorneys from the Wisconsin Department of Justice. As such, these seminars are free and open to government officials, the media and the public. The purpose of the seminars is to help government officials and the public better understand their responsibilities and rights under the law. In addition, the State Programs, Administration and Revenue Unit (SARS) within the Department of Justice will answer specific questions from local officials and the general members of the public regarding the PRL and OML. The Attorney General has the capacity to file lawsuits for compliance with sunshine laws, and while the state does not have an office dedicated solely to PRL and OML compliance, Wisconsin's resources are significant.



Wisconsin also has the Freedom of Information Council (FOIC) that provides important resources to the public to promote open government. The FOIC is a non-profit organization dedicated to safeguarding access to state and local government and defending freedom of the press. Since 1978, journalists and members of the public who comprise the FOIC have worked to protect and promote access to public records and public meetings as well as educate the public about press censorship issues.

The FOIC provides invaluable free open government resources through its website, including legal analysis of problem areas, frequently asked questions, tracked legislation and summaries of pivotal cases and Attorney General opinions. The FOIC's site, www.wisfoic.org, also provides links to the statutes, Attorney General written guides and video seminars for open government laws. Additionally, the FOIC takes up open government issues with the Attorney General and requests investigation of key matters. The FOIC is a powerful advocate for transparent and accountable government in Wisconsin.

WEAKNESSES

of Wisconsin's Public Records Law

While Wisconsin's PRL is strong in many aspects, there are several areas of weakness that could benefit from reform.

The lack of firm deadlines to mandate responsiveness to request allows public bodies to delay the production of public records.

Wisconsin's PRL states that requested records must be provided "as soon as practicable and without delay," but establishes no set timeframe. Wis. Stat. § 19.35(4)(a). Without an established response deadline, government authorities are able to delay responding to a request. Government authorities can, and according to reports, often do delay the production of records for weeks or even months.¹ The lack of specificity for which records must be produced results in needless litigation for documents that are clearly publicly accessible.

REFORM: Establish a firm statutory deadline of five days to respond to requests for public information.

Excessive and broad interpretations of PRL exemptions circumvent transparency.

An additional weakness under the PRL is the exemptions of public records classified as "drafts." The "draft" exemption has raised thorny legal questions and resulted in routine abuses of the PRL. Under the law, drafts are defined as records "prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working." Wis. Stat. § 19.32(2).

Though pivotal court rulings and Attorney General decisions have narrowly construed the draft exemption, custodians regularly claim that draft status extends to any form of a document short of the final version they determine fit for release. As a result, public bodies routinely refuse the production of records disclosable under the PRL which is in contradiction to case law.

¹ 2007 National Study of 50 States' Freedom of Information Laws by the Better Government Association and National Freedom of Information Coalition.

Abuses have been identified that include the refusal to produce reports prepared under contract by outside agencies as well as reports prepared by one agency and submitted to others for review, even though the draft definition does not authorize non-disclosure in such cases.

Charging for costs associated with searching for a requested public record is a significant disincentive to public utilization of PRL.

Wisconsin's PRL allows for the imposition of high costs imposed on individuals who make a request for public records. Wisconsin's PRL permits a government authority to charge only the "actual, necessary and direct cost" of reproducing records, but the law contains a provision allowing the authority to charge for the location of records if the cost of such efforts would be more than \$50. Wis. Stat. § 19.35(3)(a)-(c).

This provision provides a disincentive to making large-volume records requests by individuals, members of the media or civic organizations that would request a substantial number of records from government authorities. Moreover, the definition of "location costs" is not clearly defined in the statute, leading government authorities to manipulate ambiguity within the law and force significant charges on requestors.

REFORM: Limit allowable costs by a public body to actual costs of reproduction that does not include searching, compiling, or redacting public information and cap allowable costs by a public body to \$.15 per page.

The lack of an administrative appeals process provides for litigation as the primary avenue to address non-disclosure.

Once an individual makes a request for public information through the PRL and is denied access, the PRL provides for no mechanism to resolve the dispute outside of litigation. Wisconsin, along with Ohio and Minnesota, does not have an administrative appeals process for reconsideration of a request. A person who has been denied a request may file his or her own action in court seeking relief. Wis. Stat. § 19.37(1).

An individual may also request that the district attorney of the county where the record is located pursue the matter in court, as well as the Attorney General. Wis. Stat. § 19.37(1)(b). Litigation is a costly endeavor that could be circumvented by an administrative appeals process.

REFORM: Amend the PRL to allow for an administrative appeals process to the head of the public body that must be responded to within a specific amount of time, such as seven working days, prior to filing litigation.

Ambiguity regarding who is covered under the PRL leaves large loop-holes.

Entities that are subject to the PRL include state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or a *quasi-governmental corporation*. . . . Wis. Stat. § 19.32.

However, the PRL fails to further define what a quasi-governmental entity is, leaving significant questions as to which contractors are covered by the statute and creating situations where private government contractors can attempt to circumvent disclosure under the PRL. In an effort to clarify the statute, in 2008, the Wisconsin Supreme Court ruled that a “quasi-governmental corporation” falls under the open meetings and public records laws if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status. *State of Wisconsin v. Beaver Dam Area Development Corporation*, 2008 WI 90.

REFORM: Amend the PRL to state that in addition to governmental bodies, private entities that are supported by public monies are subject to the PRL. Additionally, private entities that contract with public bodies are subject to PRL regarding all public services contracts and supporting documentation.

Wisconsin's statute of limitations only applies to a certain segment of the population and creates a tiered system for access to public records.

The PRL provides for no time limits for which an individual must file a claim seeking a mandamus to force the production of public records. However, the PRL has a provision which mandates that a committed or incarcerated person may only file for mandamus action within 90 days after the date that the request is denied by the authority having custody of the records. Wis. Stat. §19.37(1m). Creating a two-tiered system for enforcing access to public records contradicts openness provisions of the statute.

REFORM: Delete this provision as it creates unequal access to public records.

SUMMARY OF LAW

of Wisconsin's Public Records Law

The following section provides a summary of the main components of the Wisconsin PRL. This summary provides an overview of the nuts and bolts of the law, including what records are covered, how to appeal a denial of records requests and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in public records litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

The Wisconsin PRL permits requestors to inspect or obtain copies of public records maintained by government "authorities." Authorities include a state or local office, elected official, agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, law, ordinance, rule, or order, and any governmental or quasi-governmental corporation (except for the Bradley Center sports and entertainment corporation).

Requested records are evaluated in one of three categories:

- (1) absolute right of access;
- (2) absolute denial of access; and
- (3) right of access determined by a balancing test.

The Wisconsin courts have created a balancing test which asks: (1) is there such a record; (2) is the requestor entitled to access the record pursuant to the statute or a court decision; (3) is the requestor prohibited from accessing the record pursuant to the statute or a court decision; and (4) does the balancing test compel access to the record. The custodian evaluating the request must weigh the competing interests involved and determine whether permitting inspection of the record would result in harm to the public interest, which outweighs the legislative policy recognizing the public's interest in allowing inspection.

Public Records Open to Disclosure

The PRL applies to any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. Contractors' records are disclosable to the same extent as if the record were maintained by a government authority. Access to records however, does not extend to subcontractors to which the authority is not a party unless the information is required by, or provided to, the authority under the general contract to which the authority is a party.

Public Records Exempt From Disclosure

The exemptions to PRL may be grouped into the following areas:

- (1) Records requested by prisoners and committed persons, unless the person requests inspection or copies of a record that contains specific references to that person or to his or her minor children if the physical placement of the children has not been denied to the person and the record is otherwise accessible to the person by law.
- (2) Certain law enforcement investigative records.
- (3) Computer programs and trade secrets.
- (4) Identities of applicants for public positions (until finalists are chosen).
- (5) Identities of law enforcement informants.
- (6) Employees' personnel records and records of public officers (*i.e.*, containing personal information or pending investigations, though employees may review their own files subject to certain exemptions).
- (7) Ambulance records.
- (8) Patient health care records.
- (9) Law enforcement officers' records of children (*i.e.*, juvenile criminal records).
- (10) Public library user records.
- (11) Certain assessment records. *I.e.*, personal property records and property tax income and expense information are generally confidential.

As discussed more fully below in the "Main Areas of Litigation" category the PRL also contains an exemption for drafts, defined by the law as records "prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working."

Special Provisions Regarding Electronic Mail

The PRL specifically includes "electromagnetic information" among its definition of a record, therefore electronic mail is treated as a public record so long as it is created or kept in connection with official business. In addition, Wisconsin Stat. § 16.61, which governs retention, preservation, and disposition of state public records, includes "electronically formatted documents" in its definition of public records.

Trend of Public Records Law Cases Addressing Electronic Mail

Wisconsin courts have consistently affirmed that electronic mail and other electronic records are covered by the PRL and must be disclosed if requested. However, certain electronic mails may fit within the “draft” or “notes” exceptions to PRL and are thus exempt from disclosure.

Fees for Public Records

Only the “actual, necessary, and direct cost” of reproducing records may be charged under the PRL. Costs associated with locating records may be assessed when more than \$50 is required to locate records.

Main Areas of Litigation and Typical Outcomes Regarding Public Records Exempt From Disclosure

The PRL’s exemption for drafts has created significant legal questions. The exemption defines drafts as records “prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working.” Though pivotal court rulings and Attorney General decisions have narrowly construed the draft exemption, custodians regularly claim that draft status extends to any form of a document short of the final version they determine fit for release.

Custodians’ attempt to withhold public records under the draft exemption typically fail. Whether prosecutors’ records are disclosable under the PRL has been a contentious issue. The Wisconsin Supreme Court resolved this question by ruling that state prosecutors’ files are exempt from the PRL and that prosecutors are not required to respond to records requests under the statute.

What Information Must a Requestor Provide?

A requestor does not need to provide his or her identity or the reason why the requestor wants particular records.

Deadline for Production of Public Records

The custodian of records must respond to a PRL request “as soon as practicable and without delay.” Though no exact timeframe is provided, the PRL provides that a reasonable response time 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 related considerations.

Denial of a Records Request

If a public records request is made orally, the government authority may deny the request orally unless the requestor asks for a written statement of the reasons for denial within five business days of the oral denial. Denial of a public records request must be specific and sufficiently stated. If the public records request was made in writing, a denial or partial denial also must be in writing.

What Must be Included in Denial Letter?

If the confidentiality of the requested record is guaranteed by the PRL, citation to the appropriate statutory provision is sufficient. If no statutory provision is applicable, the denial must be accompanied by a statement detailing the specific public policy reasons for refusal. Denial of a written request must inform the requestor that the denial is subject to review in a mandamus action under Wisconsin Stat. § 19.37(1) or by application to the local district attorney or Attorney General.

Appeal to Public Body

Appeals for standard denials of public records requests are discussed in the following category (“Appeal to State Court”). Personally affected individuals have the right to appeal to the government authority. An individual authorized to inspect a record under PRL or a person authorized by that individual may challenge the accuracy of a record containing personally identifiable information pertaining to that individual by notifying the government authority in writing of the challenge.

The authority must correct the public record or deny the challenge, notify the challenger of the denial, and allow the challenger to file a concise statement of reasons for the individual’s disagreement with the disputed portions of the record.

Appeal to State Court

If a government authority denies a public records request in whole or in part or delays granting access to a record or part of a record after a written request for disclosure is made, the requestor may (1) bring a mandamus action asking a court to order release of the record or (2) submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that a mandamus action be brought.

Penalties for Violation

Attorneys’ fees, damages of at least \$100 and other actual costs are available to a requestor who prevails in whole or in substantial part in a mandamus action. A government authority’s custodian who is responsible for an arbitrary and capricious delay or denial may be subject to punitive damages of no more than \$1,000.

A committed or incarcerated person is not entitled to the minimum \$100 damages, although the court may award damages. In a request for personally identifiable information, there is no minimum recovery of \$100 in damages. In such a case, actual damages may be recovered if the court finds that the authority acted in a willful or intentional manner.

Criminal penalties may be imposed for (1) destruction, damage, removal, or concealment of public records with intent to injure or defraud or (2) alteration or falsification of public records.

Availability of Attorneys' Fees for Public Records Litigation

Attorneys' fees are available to a requestor who prevails in whole or in substantial part in a mandamus action. Courts have established that the test for "prevailing" for purposes of winning attorneys' fees requires the requestor to show that the prosecution of the mandamus action could "reasonably be regarded as necessary to obtain the information" and that a "causal nexus" exists between the legal action and the custodian's disclosure of the requested information. Pro se plaintiffs (individuals who serve as their own lawyers) are not entitled to attorneys' fees under PRL.

Whether Attorneys' Fees Are Usually Granted

Courts award attorneys' fees fairly consistently in PRL cases in which the plaintiff prevails and is not representing himself or herself as a *pro se* plaintiff.

General Areas Litigated Most Commonly and Typical Outcomes

Disclosure of public documents is a key area of litigation. Courts generally analyze disputes in this area by balancing the public's interest in nondisclosure against the public's right to information. *See, e.g., Osbkosb NW Co. v. Osbkosb Library Bd.*, 373 N.W.2d 459 (Wis. Ct. App. 1985), which found that while protecting an official's reputation was an insufficient reason for nondisclosure of public records, protecting the public interest in criminal investigation was a valid reason.

Wisconsin courts are generally more favorable to the party desiring nondisclosure if the party can point to a specific public policy found in a statute that supports withholding the documents.

Litigation is on the rise regarding whether certain entities are covered by PRL as "quasi-governmental entities." It is not uncommon that Groups developed from publicly funded agencies are being sued for PRL violations. In turn, private agencies argue that the PRL does not apply to them because they are not quasigovernmental entities.

In a case of first impression in 2008, the Wisconsin Supreme Court held that an entity is a “quasi-governmental corporation” within the meaning of the open meetings and public records laws if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status. *State v. Beaver Dam Area Development Corp.*, 312 Wis.2d 84, 752 N.W.2d 295 (Wis. 2008). The Wisconsin Attorney General sued an entity to hold it accountable as a quasi-governmental entity and publicly stated that a government agency “cannot ‘spin off’ a private entity ... then consider itself above the state laws that ensure the public has open access to the public’s business.”

Ranking in 2007 National Study of 50 States’ Freedom of Information Laws

In 2007, the nonpartisan, nonprofit organizations Better Government Association and National Freedom of Information Coalition conducted a 50-state study of FOIA responsiveness.

Three of the criteria—Response Time, Attorneys’ Fees & Costs and Sanctions—were worth four points each.

Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each.

Response Time, Attorneys’ Fees & Costs and Sanctions were assigned a higher value because of their greater importance. These criteria determine how fast a requestor gets an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give public records laws meaning and vitality.

Appeals and Expedited Process, although important, were determined to be less critical in promoting open government access and thus assigned only a two-point value.

The following sets forth Wisconsin’s rankings in this study, which may be found at www.bettergov.org/policy_foia_2008.html.

- For response time (analyzing response times, the process of appealing FOIA denials and expediency, and the means to give a case priority on a court’s docket in front of other matters because of time concerns); **1 of 4**.
- For appeals (analyzing choice, cost and time); **0.5 of 2**.
- For expedited review (if a petitioner’s appeal, in a court of law, would be expedited to the front of the docket so that it is heard immediately); **0 of 2**.

- For fees and costs ((1) whether the court is required to award attorney’s fees and court costs to the prevailing requestor; and (2) what sanctions, if any, the agency may be subject to for failing to comply with the law); **4 of 4**.
- For sanctions (whether there was a provision in the statute that levied penalties against an agency found by a court to be in violation of the statute); **1 of 4**.
- Percentage (compared to other 49 states); **41 of 100**.

GRADE: F

CASE IN POINT

A recent statewide public records audit conducted by the Wisconsin Freedom of Information Council and the University of Wisconsin-Madison School of Journalism and Mass Communication found that one in ten public requests for basic documents were denied or ignored by local governments. Another two in ten requests were fulfilled only after records custodians required the requesters to identify themselves or explain why they wanted the documents, in violation of state law.

The comprehensive audit involved 318 public records requests filed in 65 counties. Notable among the audit's findings were that some municipalities charged as much as \$5 a page for photocopies, while one school district charged \$25 for meeting minutes and agendas.

Full audit results can be viewed here: www.wisfoic.org/audit/index.html.

Open Meetings Law

STRENGTHS

of Wisconsin's Open Meetings Law

The greatest strength of Wisconsin's OML is its broad coverage. The law states that "it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1). Moreover, it is well established that meetings are presumed to be open unless specific action conducted in strict compliance with the law is taken to close a meeting.

In addition, Wisconsin courts have found that the OML prevails over other laws. For example, while one Wisconsin statute provides that no action may be brought against a public official unless the official receives notice 120 days in advance, OML claims are exempt from this notice provision. *State ex rel. Auchinleck v. Town of La Grange*, 573 N.W.2d 900 (Wis. Ct. App. 1997).

The OML also provides for multiple avenues in which a lawsuit can be filed against an offending public body for violations. Individuals may file a claim in court or with the district attorney in the county where the OML violation occurred.

If the district attorney refuses to begin an enforcement action within 20 days of receiving a complaint, an individual then has two years to file a claim. The 20 day deadline provision is laudable in that it holds the district attorney accountable and ensures that individuals have timely access to courts when enforcement officers are unwilling to pursue a complaint. Alternatively, an individual may file a certified complaint with the Attorney General requesting that OML be enforced. Wis. Stat. § 19.97 et seq.

Wisconsin's OML also establishes powerful penalties for violations. Officials who violate the law are subject to forfeiture of between \$25 and \$300 for each violation. Further, courts can void actions taken at a meeting that violate the law. Significant penalties, in addition to the availability of attorneys' fees, undoubtedly serve to hold violators of the OML accountable and deter noncompliance.

Wisconsin only requires 24 hour notice for public meetings and for issuing an agenda. However, the OML requires that public notice must contain the time, date, place, and subject matter of the meeting, as well as a delineation of issues that will be considered in a closed session. Wis. Stat. § 19.84 Votes taken on items not properly listed on the public notice agenda have been found to be invalid.

In cases where a public body has voted on non-agenda items, the Attorney General has intervened and the public body has rescinded its votes. Ensuring that public bodies only take action on items that the public has properly received notice of advances transparency in government decision making.

Lastly, Wisconsin has significant resources available to the public to address OML issues. As noted under the Wisconsin PRL section, the Attorney General provides free training seminars to government officials, the media and the public. Additionally, the Attorney General will field calls from the public regarding the PRL and OML as well as file litigation against public bodies who violate the OML. Moreover, the non-profit FOIC is an essential advocate and educator about sunshine matters and press censorship. They also monitor open government issues and take action to encourage the Attorney General to investigate matters that thwart transparency in government.

WEAKNESSES

of Wisconsin's Open Meetings Law

Enforcement of the OML rests largely on the public despite alternative avenues.

Reports suggest that the agencies charged with enforcement of OML are often unwilling to pursue open meetings complaints. While the Attorney General and/or the district attorneys have the statutory capacity to intervene on OMA issues and bring litigation to ensure that an offending public body is brought to account, they rarely do so.

The result is that individuals bare the burden of enforcing the statute. The reluctance of the Attorney General and district attorneys to pursue violations weakens statutory provisions that would otherwise substantially further transparency goals espoused in the OML.

REFORM: While the Attorney General will consider responding to the PRL and OML inquiries, the SARS program should have a sunshine division dedicated to enforcing the PRL and OML. Additionally, mandatory annual training of public officials should be required, along with signing a certification of completion.

Short public notice provisions contradict public policy of encouraging public participation in the affairs of government.

The OML has a tremendously short statutory notice period of 24 hours which is given to a designated official newspaper that has been designated. Wis. Stat. § 19.84 Publication on a public body website is not required. The practical implication of a mere one day notice in an official newspaper significantly impedes the public from adequately preparing and organizing to attend meetings.

The short notice provision is particularly acute for State Legislature meetings, which may be located far from where advocacy groups or individuals reside. Moreover, reports indicate that certain groups are favored in notification, while others only get the brief statutory notice.

REFORM: Require a minimum of 72 hours notice for public meetings. Require that the notice be posted on the public body's website, and at the location of the meeting in a clearly identifiable location, as well as to any newspaper that submits a notice request.

The OML fails to address email communications.

While Wisconsin's PRL law specifically identifies electromagnetic information as being subject to disclosure, the OML is silent on when electronic communications become an impermissible meeting. Increased Internet usage by public officials creates a problem of "walking quorums" not yet regulated by the OML. A walking quorum exists when a matter discussed outside of the public view by electronic communication comes into question and is a contradiction to transparency provisions.

REFORM: Mandate that electronic communications, including successive email communications, among a simple majority of a public body are prohibited under the OML.

Detailed public meeting minutes are not required under the statute.

In addition to poor notice requirements, Wisconsin's OML does not require public bodies to keep detailed minutes of their meetings for open or closed sessions. The OML requires only that motions and roll call votes from closed sessions be recorded and available. Wis. Stat. § 19.88(3). For individuals who do not attend public meetings, the mere documentation of motions, votes, and roll calls for closed meetings does little to inform the public about meeting activity.

Moreover, because public meetings and closed meetings are not required to be taped, there is little historical documentation of public discussions. The result is a limited and linear documentation of public meetings. Moreover, closed sessions provide for even less transparency regarding minutes, and as such, the minutes of closed sessions are not useful because no substantive detail is required under the law.

REFORM: Require meetings minutes to include substantive discussion detail. Mandate verbatim recordings of closed sessions, which become publicly available after one year.

As with the PRL, Michigan’s OML lacks definition as to who is covered under the law.

As with the PRL, the OML identifies “quasi-governmental corporations” as being subject to the statute. However there is no precise definition as to what a quasi-governmental corporation is. The ambiguous nature of the term has been the subject of much debate.

In 2008, the Wisconsin Supreme Court ruled that a “quasi-governmental corporation” falls under open government statutes if the entity, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status. *State v. Beaver Dam Area Development Corp.*, 312 Wis.2d 84, 752 N.W.2d 295 (Wis. 2008).

REFORM: Amend OML to state that private entities supported by public monies are subject to the PRL.

SUMMARY OF LAW

of Wisconsin's Open Meetings Law

The following section provides a summary of the main components of the Wisconsin OML. This summary provides an overview of the nuts and bolts of OML, including what types of meetings are covered by the law, the procedures for closed sessions, how to appeal a violation and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in OML litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

Wisconsin's OML applies to every meeting of a governmental body. Governmental bodies include state or local agencies, commissions, departments, and councils. The law also applies to the State Legislature, but not to a partisan caucus of the Senate or Assembly. In addition, governmental or quasi-governmental corporations are covered by the law.

Are Committees, Advisory Groups, Subcommittees Covered?

Yes. The OML covers separate, smaller bodies created by the parent body and including people from the parent body. Bodies created by a directive and advisory bodies created by a constitution, statute, ordinance, rule, or order and bodies created by a directive also are covered.

Types of Gatherings Covered

The law applies when two requirements are met: (1) the body meets with the purpose of engaging in governmental business; and (2) the number of members present is sufficient to determine the body's course of action.

Under the first requirement, the body must meet to engage in business, including discussion, decision, or information-gathering on issues within the body's responsibilities.

To satisfy the second requirement, a gathering is covered under the law depending on the number of members needed to determine a course of action. This can be fulfilled by a simple majority. It also can be fulfilled by the existence of a negative quorum, which is a group of a sufficient size to block a proposal.

The numbers requirement also can be satisfied with a walking quorum. A walking quorum is a series of gatherings of members of a governmental body, each less than quorum size, who agree to act in concert to reach a quorum. Also, when a quorum of the members of one governmental body attend another body's meeting to gather information or engage in governmental business on a matter under their responsibility, that meeting also is covered. Gatherings that happen by chance or as social occasions are not covered.

If at least one-half of the body is present at the meeting, then the meeting is presumed to be for engaging in government business.

What Meetings Must Be Open?

Each meeting of a body whose purpose is to conduct official business has to be in open session. "Official business" includes discussion, decision-making, or information-gathering regarding issues subject to the body's authority.

Exceptions: Closed Meetings

There are several types of authorized closed meetings:

- (1) Judicial or quasi-judicial hearings.
- (2) Consideration of employment or licensing matters, including consideration of financial, medical, social, or personal information of public employees or prospective public employees, and disciplinary actions.
- (3) Consideration of financial, medical, social or personal information.
- (4) Conducting public business about issues with competitive or bargaining implications.
- (5) Conferring with legal counsel for litigation that is pending or likely to occur.
- (6) Considering applications for probation, parole, or strategy for crime detection and prevention.
- (7) Deliberations by the state council on unemployment insurance and worker's compensation.
- (8) Deliberations about the location of a burial site.
- (9) Consideration of requests for confidential written advice from an ethics board.



- (10) Considerations about a business ending its operations or laying off employees.
- (11) Considering financial information about a non-profit corporation operating an ice rink owned by the state.

Procedures for Closed Meetings

Every meeting must first be convened in open session. To move to a closed session, the chief presiding officer must announce and record the nature of the business to be discussed and the exception in the OML that allows for the closed session. Then, the body must pass a motion, by recorded majority vote, to meet in closed session. In the closed session, members of the body may only discuss the business specified during the vote. The members must return to open session to vote on said business.

If the body wants to reconvene in open session within twelve hours of the closed session, the body must provide public notice of the open session “at the same time and in the same manner” as the public notice of the original open session.

Recordkeeping for Meetings: Minutes Requirements

Governmental bodies do not need to keep detailed minutes of their meetings. The body must keep a record of the motions and roll call votes at each meeting. The motions and roll call votes can be tape recorded. A consent agenda is most likely not a sufficient means for recording votes.

Statutes outside the OML require the county, village, and city clerks to keep a record of proceedings of their governing bodies.

Counties: The county clerk is required to keep and record in a book the minutes of all proceedings of the board. The clerk must make entries of the board’s resolutions and decisions on all questions and record the vote of each supervisor on any question submitted to the board. The county clerk also must record in a book every resolution adopted, order passed, and ordinance enacted.

Villages: The village clerk must record and sign the proceedings of all meetings of the village board. In addition, the village clerk must record and sign all ordinances, bylaws, resolutions, and regulations that the village board adopts. The village clerk must use a minute book, which contains the full minutes of all the proceedings of the board of trustees.

Cities: The city clerk must attend the meetings of the city council and keep a full record of the city council’s proceedings.

Taping or Filming Meetings

As long as the meeting is not disrupted, individuals may tape or film open session meetings. The governmental body must make a reasonable effort to accommodate members of the public who wish to tape, film, or photograph a meeting in open session.

Are Electronic Mail Communications a Meeting?

The OML does not address electronic communications, but lists “electromagnetic information” in its definition of a record. Courts interpreting PRL have held that electronic mail and other electronic records must be released on request.

The Wisconsin Attorney General suggests that the following factors are relevant to determine whether means of electronic communications constitute a meeting under the OML: number of participants; number of communications regarding the subject; time frame within which the communications occurred; and extent of conversation-like interactions.

Public Notice of Time and Place for Meetings: Requirements for Agendas

Public notice must contain the time, date, place, and subject matter of the meeting, including issues that will be considered in a closed session. The form of the notice must be reasonably likely to inform members of the public and news media. The notice does not need to contain a detailed agenda.

The Wisconsin Attorney General has suggested that an appropriate benchmark is to ask whether, after reading the notice, a person interested in a particular issue would be aware that this issue would be discussed during the meeting. Bodies cannot use general designations, such as “miscellaneous business” or “agenda revisions” as a means to raise a broad range of subjects.

As for timing, the OML requires the government body to provide 24-hour notice of a meeting, unless good cause makes the 24-hour requirement impractical or impossible. Wisconsin courts have not defined “good cause.” In the case of an emergency, the government body must provide notice at least two hours prior to the meeting.

The notice must alert the public, news media that request notice, and any officially designated newspapers. Public notice may be accomplished by posting in places likely to be seen by the public. The Wisconsin Attorney General has suggested a minimum of three locations. Notice must be provided for each separate meeting; that is, a government body cannot produce a single notice for a series of meetings.

Summary of Pivotal State Supreme Court OMA Decisions

State ex rel. Auchinleck v. Town of LaGrange, 547 N.W.2d 587 (Wis. 1996)

The court held that actions brought under the OML are exempt from the usual notice provisions required when someone sues an official. The court reasoned that requiring a resident to follow the statutory notice period of 120 days would frustrate the purpose of the OML.

State ex rel. Newspapers v. Showers, 398 N.W.2d 154 (Wis. 1987)

Showers articulated the requirements for when a gathering is subject to the OML: (1) The purpose of the meeting is to engage in governmental business, including information-gathering, decision-making, or discussion; and (2) the number of members present is sufficient to determine the parent body's course of action regarding the proposal at issue.

State ex rel. Lynch v. Conta, 239 N.W.2d 313 (Wis. 1976)

The court held that, when a subgroup of a parent body meets, the gathering is subject to the OML if a quorum is present. A political party meeting is not subject to the OML.

State ex rel. Journal/Sentinel, Inc. v. Pleva, 456 N.W.2d 359 (Wis. 1990)

A lease between the City of Milwaukee and a non-profit organization incorporated the OML. The court held that when a contract incorporates the OML, plaintiffs may use the law to seek relief.

Enforcement

The Wisconsin Attorney General and district attorney have the authority to enforce OML. A district attorney can enforce the law after an individual files a complaint. Once an individual files a complaint, the district attorney has 20 days to enforce the law. After 20 days, if the district attorney refuses to begin an enforcement action or fails to act, the individual can bring an action in the name of the state.

Penalties for Violation

Members of governmental bodies are subject to a forfeiture of between \$25 and \$300 for each violation. If the district attorney brings the action, then the forfeiture is awarded to the county. If the Attorney General or a private resident brings the action, the forfeiture is awarded to the state. A court also can issue a declaratory judgment, an injunction, or a mandamus. The court also can void an action taken at a meeting that violated the OML.

Are Criminal Penalties Assessed Regularly?

No. Only civil penalties are available.

Availability of Attorneys' Fees for OMA Litigation

Attorneys' fees are available, but not for a pro se plaintiff. If a resident brings an action on behalf of the state because the district attorney refused or failed to commence the action, and the resident prevails, the court may award reasonable attorneys' fees.

In an advisory opinion, the Wisconsin Attorney General has stated that in limited circumstances, a city council may reimburse a council member for attorneys' fees. To be reimbursed, the council member must not have violated OML while conducting his or her official duties. 66 Op. Att'y Gen. 226 (1977).

Wisconsin courts also have addressed the issue of what constitutes "reasonable" attorneys' fees. *State ex rel. Hodge v. Town of Turtle Lake*, 526 N.W.2d 784 (Wis. Ct. App. 1994). In *Hodge*, the court stated that to determine the amount of fees to pay, the court should start by taking the number of hours billed and multiply that figure by the reasonable private rate of service. The court also stated that when determining attorneys' fees, courts may take into account factors specific to the case, such as the particular facts surrounding the violation and the ability of the responsible party to pay.

Whether Attorneys' Fees Are Usually Granted

Successful plaintiffs are generally awarded attorneys' fees.

General Areas Litigated Most Commonly and Typical Outcomes

The most commonly litigated area involves the notice requirement. In most cases, the court determined that the government body's notice was sufficient. Courts generally found in favor of the government body as long as the notice was specific enough to apprise members of the public of the subject matter of the meeting. For closed meetings, one court stated that because those discussions are unpredictable, it would be unreasonable for a governmental body to specify the exact issues to be discussed. *State ex rel. Auchinleck v. Town of La Grange*, 573 N.W.2d 900 (Wis. Ct. App. 1997).

There are two cases in which the notice was found to be insufficient. In one instance, the notice was insufficient because the members of one body failed to give separate notice that they were attending the meeting of another body. *State ex rel. Badke v. Village Bd. of Greendale*, 494 N.W.2d 408 (Wis. 1994). In the second instance, the town failed to provide proper notice before going into closed session. *County of Oneida v. Crist*, 460 N.W.2d 447 (Wis. Ct. App. 1990).

CASE IN POINT

A Circuit Court judge in Polk County found that 20 Polk County Board supervisors violated Wisconsin's OML while negotiating and finalizing a sale agreement for a county owned nursing home for the elderly by repeatedly making key decisions in closed session. The County argued that the identity of the buyer needed to remain confidential until a sale agreement was finalized because the Finance Committee of the County Board was concerned that if the name of any potential buyers were released, they could walk away from the deal if they were harassed by a group who was opposing the sale.

The judge rejected the argument, stating that the mere fact that a government decision is contentious does not warrant a closed meeting. The original complaint listed 83 OML violations. Jim Drabek acted as a citizen prosecutor, and he appears to be the first layperson to win such an OML case. Drabek was outraged by the County Board's behavior, saying, "What if your mother lived at Golden Age Manor, if she was a resident there? Wouldn't you want to know who's going to take care of her? I think this is just horrendous." In September 2008, a Wisconsin appellate court voided the Golden Age Manor sale agreement and the state Supreme Court declined to review the decision.

The entire story can be found at:
www.burnettcountysentinel.com/read/detail/36931.html.

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Coverage	All public bodies, including legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the state.	All public bodies, including state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities. If an entity receives more than half of its funding through a state or local authority, it is considered a public body.
Public Records Open to Disclosure	Any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.	A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function.
Form of Records	Requestor's choice; can be paper or other medium if public body normally maintains records in that form.	Requestor's choice; can be paper or other medium.
Electronic Mail	E-mails are covered.	E-mails are covered.
Fees for Public Records	Only for actual cost of reproduction and certification; not for cost of labor.	Fees may be charged for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. Fees also may be imposed for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs.

MINNESOTA	OHIO	WISCONSIN
<p>All government entities, including state agencies, record-keeping systems, political subdivisions, corporations or non-profits under contract, state university system and school districts, and any officer, board, or authority appointed for an agency or ordinance or any level of local government (counties, districts, charter cities, towns, etc.).</p>	<p>All public bodies, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by any alternative school in the state of Ohio kept by a non-profit or for profit entity.</p>	<p>All government “authorities,” including a state or local office, elected official, agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, law, ordinance, rule, or order, and any governmental or quasi-governmental corporation (except for the Bradley Center sports and entertainment corporation).</p>
<p>Regardless of physical form, all information collected, created, received, maintained, or disseminated by the government.</p>	<p>Regardless of physical form, any document, device, or item which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.</p>	<p>Regardless of physical form, all material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved and has been created or is being kept by an authority.</p>
<p>Must be “easily accessible for convenient use.”</p>	<p>Requestor’s choice; can be paper or other medium if public body normally maintains records in that form.</p>	<p>Requestor’s choice; can be paper or other medium.</p>
<p>E-mails are covered.</p>	<p>E-mails relating to office functioning are covered.</p>	<p>E-mails are covered.</p>
<p>If copied amount is less than 100 pages, the fee is limited to 25 cents per page. If over 100 pages, charge can cover actual costs of searching for, compiling, or electronically transmitting the data (including employee time under certain conditions).</p>	<p>Only for actual cost of reproduction and mailing; not for cost of labor.</p>	<p>Only for the “actual, necessary, and direct cost” of reproducing records; not for the cost of labor. Costs associated with locating records may be assessed when more than \$50 is required to locate records.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Public Records Exempt from Disclosure</p>	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - records related to litigation - medical records - personnel records - tax assessments 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - information or records subject to the attorney-client privilege - law enforcement information - trade secrets
<p>Deadline for Production of Public Records</p>	<p>Seven business days, additional seven business days with extension.</p>	<p>Five business days, additional ten business days with extension for unusual circumstances.</p>
<p>Denial of a Records Request</p>	<p>Public body must, in writing, provide explanation, identify responsible parties, and explain appellate process.</p>	<p>Public body must provide written explanation and inform requestor of right to seek judicial review within five days, or within fifteen days under unusual circumstances.</p>
<p>What Information Must a Requestor Provide</p>	<p>None. Requestor may provide identification and purpose for a waiver of fees in the “public interest.”</p>	<p>None. Reason for request may be disclosed but cannot constitute effective denial.</p>
<p>Appeal Process (Administrative or State)</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may file action in circuit court for injunctive or declaratory relief.</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may try to compel disclosure in circuit court.</p>

MINNESOTA	OHIO	WISCONSIN
<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - personnel data - private, confidential, nonpublic and protected nonpublic data 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - medical records - trial preparation records - records pertaining to adoption hearings - trade secrets 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - patient health care records - personnel records
<p>“As soon as reasonably possible,” but no exact time period. Ten days for private and summary data.</p>	<p>“Promptly prepared,” but no exact time period.</p>	<p>“As soon as practicable and without delay,” but no exact time period.</p>
<p>Requestor has right to be informed of the specific law or classification that justifies the denial.</p>	<p>Public body must provide explanation, including legal authority. The explanation is not required to be written, unless the requestor so requests.</p>	<p>If oral request, the government authority may deny the request orally unless the requestor asks for a written statement of the reasons for denial within five business days of the oral denial. If written request, a denial or partial denial must be in writing. Reasons for the denial must be specific and sufficient.</p>
<p>None for public and summary data. Specifications vary regarding access to private data and confidential data.</p>	<p>None. Public body may ask for written request, requestor’s identification and reason, but must disclose non-mandatory nature.</p>	<p>None. A requestor does not need to provide his or her identity or the reason why the requestor wants particular records.</p>
<p>No administrative appeal process exists. Requestor may try to compel disclosure in district court. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>	<p>No administrative appeal process exists. Requestor may file a mandamus action to compel disclosure in the court of common pleas.</p>	<p>No administrative appeal process exists. Requestor may bring a mandamus action asking a court to order release of the record or submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that a mandamus action be brought. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Penalties for Violation</p>	<p>None.</p>	<p><i>Punitive damages:</i> Up to \$500. <i>Actual or compensatory damages:</i> awarded by courts.</p>
<p>Availability of Attorneys’ Fees for Prevailing Plaintiffs in Litigation</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Typical Outcome of Request for Attorneys’ Fees by Prevailing Plaintiffs in Litigation</p>	<p>Not often awarded.</p>	<p>Not often awarded.</p>
<p>Statute of Limitations to File Administrative Appeal or to File Action in Circuit Court</p>	<p>None.</p>	<p>FOIA requestors who face a full or partial denial of their records requests may submit a written appeal to the head of the appropriate public body, or may directly file a claim in court within 180 days of the purported denial.</p>

MINNESOTA	OHIO	WISCONSIN
<p><i>Exemplary damages:</i> Between \$1,000 and \$10,000. Civil penalties: Up to \$1,000 awarded by courts, payable to the state general fund.</p>	<p><i>Statutory damages:</i> \$100 per business day, up to \$1,000.</p>	<p><i>Statutory damages:</i> minimum \$100 and other actual costs (except no such recovery by committed or incarcerated persons). <i>Punitive damages:</i> up to \$1,000 for a government authority's custodian who is responsible for an arbitrary and capricious delay or denial.</p>
<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Not often awarded.</p>	<p>Not often awarded.</p>	<p>Usually awarded.</p>
<p>None.</p>	<p>None.</p>	<p>When the request comes from a committed or incarcerated person, the claim must be filed within 90 days after the request is denied.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Coverage</p>	<p>Any public body, including any legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees, or commissions, and any subsidiary bodies of any of the foregoing. Does not apply to private, non-profit corporations under any conditions.</p>	<p>Any public body, including any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform such a function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement. A board of a nonprofit corporation formed by a city under the Home Rule City Act is a public body, however, courts have found no coverage for a nonstock, nonprofit corporation created independent of state or local authority without the assistance of public funds or generally for private non-profit corporations.</p>
<p>Are Committees, Advisory Groups, Sub-Committees Covered?</p>	<p>Committees and sub-committees are covered by the law. Advisory committees that are supported in any part by tax revenue or which expend tax revenue are covered by the law pursuant to a balancing test.</p>	<p>Committees and sub-committees are covered by the law so long as they exercise governmental authority or perform a governmental function. Advisory groups are not expressly covered under the law. The Attorney General has suggested there is no coverage, however state appellate courts have found advisory committees subject to coverage in certain cases.</p>
<p>Types of Gatherings Covered</p>	<p>Coverage extends to a gathering of a majority of a quorum to discuss public business.</p>	<p>Coverage extends to any meeting of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under the Home Rule City Act. Also covered are information-gathering and fact-finding sessions called by the governmental body where a quorum of members are present and the session relates to the body's public business.</p>

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<p>Any public body, including any state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting, the governing body of any school district, unorganized territory, county, city, town, or other public body, and a committee, subcommittee, board, department, or commission of a public body subject to the law. A 2000 amendment established that corporations created by political subdivisions are subject to coverage.</p>	<p>Any public body, including any board, commission, committee, council, or similar decision-making body of a state agency, any county, township, municipal corporation, school district, or other political subdivision. Coverage can be trumped by individual city charters due to the home rule provision in the State Constitution.</p>	<p>Any public body, including state or local agencies, commissions, departments, and councils. The law also applies to the state Legislature, but not to a partisan caucus of the Senate or Assembly. Governmental or quasi-governmental corporations are also covered by the law. The statute does not address coverage for non-profit corporations, though Attorney General opinions lean toward coverage for non-profits as quasi-governmental entities.</p>
<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law, but courts have held that an advisory committee may be covered depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing body to the members.</p>	<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law and Ohio courts are split on whether advisory groups constitute public bodies.</p>	<p>Committees and sub-committees are covered by the law. Bodies created by a directive and advisory bodies created by a constitution, statute, ordinance, rule, or order and bodies created by a directive are also covered.</p>
<p>Coverage extends to gatherings of a governing body reaching a quorum, or a quorum of a committee, subcommittee board, department or commission at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body.</p>	<p>Coverage extends to a prearranged meeting of a public body in which a majority of its members attend and discuss public business.</p>	<p>Coverage extends to gatherings of a majority of the public body where the body meets to engage in business, including discussion, decision, or information-gathering on issues within the body's responsibilities. A negative quorum (sufficient number of members to determine a public body's course of action if the group votes as a block) or walking quorum (series of meetings, telephone conferences, or some other means of communication such that groups of less than a quorum are effectively meeting) can satisfy the majority requirement.</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Exemptions: Closed Meetings</p>	<p>A meeting may be closed under 24 exemptions. Examples include personnel matters, purchase of property, probable or imminent litigation and collective bargaining.</p>	<p>A meeting may be closed under 10 exemptions. Examples include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public Notice of Time and Place for Meetings: Requirements for Agendas</p>	<p>Public bodies must post an agenda for each regular meeting at least 48 hours in advance at both the principal office of the public body and at the meeting location. A schedule listing the times and places of regular meetings must be available at the office of the public body. A public body that has a website maintained by the full time staff of the public body must post all agendas and notices on its website regarding all public body meetings.</p>	<p>Public bodies must post a notice containing the dates, times, and places of the public body’s regular meetings, as well as the name of the public body, its telephone number and its address at least 18 hours before a meeting. It is required that public bodies post this notice at their principal office and any other location deemed appropriate.</p>
<p>Procedures for Closed Meetings</p>	<p>A majority of a quorum of the public body must vote to hold a closed meeting. The vote of each member and the citation to the specific closed session exemption must be publicly disclosed and entered into the minutes of the meeting.</p>	<p>A 2/3 roll call of members of the public body is required, except for the closed sessions permitted. The roll call vote and the purpose for calling the closed session must be entered into the minutes of the meeting where the vote takes place.</p>

MINNESOTA	OHIO	WISCONSIN
<p>A meeting <i>must</i> be closed for a limited range of subjects, for instance if data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults, to discuss data regarding educational data, health data, medical data, welfare data, or mental health data that are not public data or for preliminary consideration of allegations against an individual subject to the government's authority. A meeting may be closed under limited conditions, for instance if disclosure of the information discussed would pose a danger to public safety or compromise security, for labor negotiations purposes, purchase of property or attorney-client privileged matters.</p>	<p>A meeting <i>may</i> be closed under 8 exemptions. Examples include personnel matters, purchase of property and collective bargaining.</p>	<p>A meeting <i>may</i> be closed under 11 exemptions. Exemptions include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public bodies must keep schedules of regular meetings on file at their offices. The law fails to specify agenda requirements for meetings covered by the statute. However, if printed materials relating to agenda items are prepared by or at the direction of the governing body, and are distributed or available to those members, one copy of these same materials must be available in the meeting room for inspection by the public. No time limit is provided in the statute for posting notices for regular meetings, though special meetings require at least three days' notice.</p>	<p>Public bodies must establish at least one reasonable method of informing the public of meetings (sign on the front door of town hall, published information in a general circulation). News media must be informed at least 24 hours before meetings (exempting emergency meetings).</p>	<p>Public notice must contain the time, date, place, and subject matter of the meeting, including issues that will be considered in a closed session. No detailed agenda is required. The public body must provide 24-hour notice of a meeting, which may be accomplished by posting in places likely to be seen by the public. The Wisconsin Attorney General has suggested a minimum of three locations.</p>
<p>A public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Special provisions apply to close a meeting to discuss labor negotiations or to evaluate the performance of an individual subject to the government's authority.</p>	<p>The public body must hold a roll call vote and have a majority of the quorum vote to enter executive session. The motion and vote must state which one or more of the closed session exemptions will be considered at the executive session.</p>	<p>The chief presiding officer must announce and record the nature of the business to be discussed and the closed session exemption that allows for the closed session. Then, the public body must pass a motion, by recorded majority vote, to meet in closed session.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Recordkeeping for Meetings: Minutes Requirements</p>	<p>Minutes must include the date, time and place of the meeting, the members of the body recorded as present or absent and a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken.</p>	<p>Meeting minutes must be kept for each meeting showing the date, time, place, members present or absent, any decisions made, the purpose for which a closed session is held and all roll call votes taken at the meeting. Proposed minutes must be made available for public inspection within 8 business days after the meeting to which the minutes refer, and approved minutes must be available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.</p>
<p>Taping of Filming Meetings</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>Are Electronic Mail Communications a Meeting?</p>	<p>Email and Internet chat room communications are considered communications for meeting purposes under the law.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>
<p>Enforcement</p>	<p>State's Attorneys and individuals may sue to enforce the law in the circuit court. The Public Access Counselor's Office has no punitive authority but may respond to citizen's complaints and occasionally refers potential violations to the State's Attorney for investigation.</p>	<p>Individuals, the Attorney General, and the prosecuting attorney of the appropriate county all have the authority to enforce the law by filing a civil action in the circuit court to compel compliance or to enjoin further noncompliance.</p>

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<p>The law does not specifically require that minutes be taken at a regular meeting. The only statutory requirement is that votes taken at a meeting required to be public will be recorded in a journal kept for that purpose, which must be open to the public during normal business hours.</p>	<p>Minutes of regular or special meetings of any public body need to be prepared promptly, filed, and maintained so that they are available to public inspection.</p>	<p>Governmental bodies do not need to keep detailed minutes of their meetings. The body must keep a record of the motions and roll call votes at each meeting. Statutes outside the Open Meetings Law require the county, village, and city clerks to keep a record of proceedings of their governing bodies.</p>
<p>The law does not specifically address, however, a Minnesota Attorney General's Opinion states that taping is permissible if it does not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights.</p>	<p>The law does not specifically address, however, an Ohio Attorney General's Opinion states that taping or filming meetings is permissible if it does not unduly interfere with a meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings, but the state Public Records Law lists "electromagnetic information" in its definition of a record and courts interpreting that law have held that e-mail and other electronic records must be released on request.</p>
<p>Only individuals may sue to enforce the law in a district court.</p>	<p>Only individuals may sue to enforce the law in a court of common pleas. However, if a citizen suit results in an injunction against a public body, the attorney general or prosecuting attorney is responsible for bringing an action against officials who violate the injunction.</p>	<p>Individuals, the Attorney General and the district attorney have the authority to enforce the law in circuit court (though an individual must first file a verified complaint with the district attorney for his or her office to prosecute the case).</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Relief/Penalties for Violation	Available relief and penalties include mandamus, invalidation, injunction, costs and attorneys' fees. Criminal penalties include a fine of up to \$1,500 and imprisonment of up to 30 days.	Available relief and penalties include injunction, invalidation, damages up to \$500, criminal fines, costs and attorneys' fees. Criminal penalties for an intentional violation by a public official include a misdemeanor punishable by a fine of up to \$1,000, and a second intentional offense subject to a misdemeanor punishable by a fine of up to \$2,000 and/or imprisonment for up to 1 year.
Are Criminal Penalties Assessed Regularly?	Criminal penalties are rarely imposed for violations.	Criminal penalties are rarely imposed for violations.
Availability of Attorneys' Fees for OMA Litigation	Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.	Attorneys' fees are available where a violation was intentional and the plaintiff is successful, but not for <i>pro se</i> plaintiffs. Attorneys' fees will not be granted unless injunctive or declaratory relief is granted.
Whether Attorneys' Fees are Usually Granted	Attorneys' fees are usually not granted to prevailing parties.	Attorneys' fees are generally awarded when declaratory or injunctive relief is granted to a plaintiff.
Public Comment Mandated at Public Meetings?	No public comment required	Public comment <i>required</i>
Statute of Limitation to File Lawsuit	60 days	An action for injunctive relief must be filed within 180 days of the alleged violation. Litigation which seeks to invalidate a decision of a public body must be initiated within 60 days of the approved minutes, or within 30 days for decisions involving property, money, contracts or bond issuance.

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<p>Available relief and penalties include injunction, damages up to \$300, costs, attorneys' fees and removal from office. In addition, if a person is found to have intentionally violated the statute in three or more actions involving the same governing body, that person must forfeit any further right to serve on the governing body for a period of time equal to the term of office such person had served.</p>	<p>Available relief and penalties include injunction, \$500 civil forfeiture fine, costs, attorneys' fees, invalidation and removal from office. If the court deems the plaintiff's action was frivolous, the court may award all court costs and reasonable attorneys' fees to the public body.</p>	<p>Available relief and penalties include declaratory relief, injunction, mandamus, invalidation, damages from \$25 to \$300, costs and attorneys' fees.</p>
<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>
<p>The court may award reasonable costs, disbursements, and attorneys' fees of up to \$13,000 to any prevailing party, but attorneys' fees may not be awarded against a member of the public body unless the court finds there was an intent to violate the law. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs without merit.</p>	<p>Attorneys' fees are available for a prevailing party if the court issues an injunction, but not for <i>pro se</i> plaintiffs. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs.</p>	<p>Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.</p>
<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>	<p>Attorneys' fees are generally granted to plaintiffs who prevail in winning injunctive relief. However, they are rarely awarded to defendant public bodies for frivolous lawsuits.</p>	<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>
<p>No public comment required</p>	<p>No public comment required</p>	<p>No public comment required</p>
<p>No time line</p>	<p>Two years</p>	<p>Once an individual files a verified complaint, the District Attorney has 20 days to enforce the law. After 20 days, if the District Attorney does not begin an enforcement action, the individual can bring the action in the name of the state for up to two years.</p>