



## **THE CITIZEN ADVOCACY CENTER'S GUIDE TO THE WISCONSIN PUBLIC RECORDS LAW AND OPEN MEETINGS ACT**

*(Issued 12/08)*

Open government statutes are cornerstone laws that ensure the public's capacity to play an essential role in the democratic process. They provide the mechanism by which people can knowledgeably discuss public issues, make informed political judgments, and monitor public officials and government agencies to ensure that government is acting in the public interest. To that end, the following is a general guide to the Wisconsin Public Records Law and Open Meetings Law statutes produced by the Citizen Advocacy Center.

### **PUBLIC RECORDS LAW**

In 1981, the Wisconsin State Legislature enacted the Public Records Law (the PRL). The PRL sets requirements for the disclosure of public records by all public bodies. Within specified limitations, the PRL allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office. Notably, contractors' records are disclosable under the Act to the same extent as if the record were maintained by a government authority. This access to government information is fundamental to the system of open government in Wisconsin, and to the rights of citizens to be informed about the actions of public offices on matters of public concern. Anyone (including individuals, groups, associations, corporations, firms, partnerships or organizations) may obtain access to government-held information.

#### **WHAT INFORMATION IS AVAILABLE?**

Some examples of the records available under the PRL are orders, rules, policy statements, planning policies and decisions, reports or studies, public contracts, the names, titles and salaries of public employees and the voting records of all public bodies. E-mail communications are typically considered a public record. 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.

#### **WHO IS SUBJECT TO THE ACT?**

The PRL permits requestors to inspect or obtain copies of public records maintained by government authorities. Authorities include any of the following that have custody of a record: a state or local office, elected official, agency, board, commission, committee, council,

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department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation (except for the Bradley center sports and entertainment corporation); a local exposition district or a long-term care district under certain conditions; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the previous entities.

## **HOW TO FIND INFORMATION**

Under the PRL, every public body must make their existing records available to the public. The PRL does not require these bodies to answer specific questions, create new records or keep a central library or index of all government records.

Consequently, if a requestor does not know which public body has the records they are seeking, an informal, polite telephone call may be the best place to start. Speaking with those public bodies who have the names or responsibilities related to the topic might help identify the appropriate body to which the request should be addressed.

## **HOW TO MAKE A REQUEST**

### **• Put it in writing**

An informal telephone call or visit may help the public body in possession of the records. Though Wisconsin does not require that a request be submitted in writing for it to be official, a written request will allow a requestor to take advantage of the time limits and appeal mechanisms provided in

the PRL. The requestor should date and keep a copy of the letter. Also, if the requestor sends his or her request by certified mail and requests a return receipt, they will be able to prove the date on which the request was received.

Be sure to check with the public body from which information is being requested to determine if there are specific requirements for filing a public records request. Some public bodies require certain forms to submit a request or require that requests be delivered in person. Keep in mind that a public body may not require a requesting party to identify themselves or list a reason for the request in either a written or in-person records request.

### **• Be specific**

The letter must specify the records desired. If all records of a broad category are requested, collecting the records might unduly burden the public body, which could justify a delay or refusal to release the records. If a requestor wants information on a certain topic, but knows there are some kinds of material they do not want (*e.g.*, newspaper clippings, or records created before or after a certain date), that requestor can ask that these materials be omitted. A party seeking records should also state his or her preferred format (*e.g.*, paper copy or diskette). A specific request will avoid confusion and high copying fees.

## SAMPLE REQUEST LETTER

Date

*(If desired: Certified mail -- return receipt requested)*  
*(name and title of official) (address of appropriate office of the public body)*

Dear *(name)*,

Pursuant to the Wisconsin Public Records Act, Wis. Stat. § 19.31 *et seq.*, this is a request for a copy of the following record(s): *(Describe the subject or the documents containing the information that you want).*

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, I would like to inspect the entire document. Under the Public Records Law, all non-exempt portions of any partially-exempt documents must be disclosed.

If any fee in excess of \$\_\_\_ will be incurred in fulfilling this request, please obtain my approval before the fee is incurred. *(Or, if applicable, request a fee reduction or waiver: I request a waiver of any fees your office would ordinarily impose in responding to a request. I do not seek these records for commercial purposes and I intend to disseminate the information because disclosure is in the public interest in that it \_\_\_\_\_.)*

If any records or portions of records are withheld, please state the exemption on which you rely, the basis on which the exemption is invoked, and the address to which an appeal should be addressed. Thank you for your prompt consideration of my request. If you have any questions, or if I can be of assistance, please contact me at \_\_\_\_\_.

Sincerely,

*(name)*

## WHAT IT MAY COST

- **Reasonable copying costs**

Under the PRL, fees can only be assessed for the “actual, necessary, and direct cost” of reproducing records. If locating the requested records would cost more than \$50, a government body may assess an additional location fee for such efforts. It is important to note that in Wisconsin, a governmental authority can demand prepayment of fees for requests exceeding \$5.00.

- **Fee waiver or reduction**

Public bodies may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

## THE AGENCY RESPONSE

The PRL requires that the custodian of records for the public body must respond to a request “as soon as practicable and without delay.” Though no explicit timeframe is established, the PRL states that a delay in replying to a records request is not the equivalent of a denial, but any delay in granting access may become the basis for a lawsuit to obtain access to public records. 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. Reasons for the 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.

The denial letter the public body issues must contain certain information. If the confidentiality of the requested record is

guaranteed by the PRL, citation to that statute is sufficient. However, if the statute does not explicitly allow the public body to withhold the records that have requested, the denial letter must be accompanied by a statement of the specific public policy reasons for refusal. The denial letter must state 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.

## HOW TO APPEAL

If a public records request is denied, the requesting party has no administrative appeal right and must proceed directly to court for potential relief. Therefore, if a government authority denies a request in whole or in part or delays granting access after receiving a written request for disclosure, one 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. There is no time limit for filing a lawsuit under the PRL.

## DAMAGES, COSTS AND ATTORNEYS’ FEES

Actual, compensatory and punitive damages are available if to prevailing plaintiffs in PRL litigation. Attorneys’ fees, damages of at least \$100 and other actual costs are available to plaintiffs that prevail in whole or in substantial part in a mandamus action.<sup>1</sup> A government authority’s custodian who is responsible for an arbitrary and capricious delay or denial may be subject to punitive damages of up to \$1,000. Attorneys’ fees

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<sup>1</sup> Note that a committed or incarcerated person is not entitled to the minimum \$100 damages, although the court may award some amount of damages.

are often awarded for plaintiffs who win a lawsuit, but plaintiffs representing themselves (*i.e.*, *pro se*) are generally not awarded attorneys' fees.

## EXEMPTED INFORMATION

The PRL exempts certain kinds of information from disclosure. Public bodies may, but are not required to, withhold from disclosure certain categories of public records. If a requested record contains some exempt and some non-exempt information, the Act requires that the public body delete the exempt material and disclose the rest.

The categories of information that must be withheld are the following:

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).

## STRENGTHS OF THE LAW

Following are a summary of several strengths of the PRL:

- The greatest strength of PRL is its broad coverage.
- The PRL includes substantial penalties for violations, including punitive damages. In addition, criminal penalties may be imposed for destruction, damage, removal or concealment of public records with intent to injure or defraud or the alteration 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 punish those who fail to properly comply with the law.
- Requestors are explicitly protected from being forced to disclose their identity or reasoning for their request. Allowing a government authority to require an individual to state his or her identity to obtain public records may create a disincentive to individuals who fear government retaliation or who simply wish to remain anonymous.
- Wisconsin has remarkable open government resources for the public. The Wisconsin Attorney General has recently scheduled a series of open government training seminars 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.

- The Wisconsin Freedom of Information Council (FOIC) provides an important resource to promote open government in Wisconsin. Since 1978, 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. Additionally, the FOIC takes up open government issues with the Attorney General and requests investigation of key matters.

## **RECOMMENDATIONS FOR REFORM**

Following are a summary of several weaknesses of the PRL and potential reforms:

- Instead of establishing a concrete timeline for public entities to respond to public records requests, the law stipulates that requests must be responded to “as soon as practicable and without delay.” This language is problematic because government entities can, and often do, give records requests low priority, forcing the requesting party to either file a lawsuit or abandon his or her request. A set response deadline should be adopted.
- The PRL does not offer an administrative remedy, or any remedy short of litigation, to

requestors who are denied the information they requested. To avoid high costs of litigation and promote early resolution, administrative channels should be provided under the law.

- “Drafts,” 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,” are exempt from disclosure under the law. Overly broad interpretations of this exemption by government entities regularly lead records custodians to refuse to produce records that are disclosable under the PRL. The draft exemption to record disclosure should be clarified and limited.
- High costs can be imposed on individuals making public records requests requiring a substantial number of records. Though the PRL permits the government authority to charge only the “actual, necessary and direct cost” of reproducing records, it also permits an authority to charge for the location of records if the cost of such efforts would be more than \$50. This provision provides a disincentive to make a large-volume records request by individuals. This excessive charge should be dropped from the law.

## **OPEN MEETINGS LAW**

In 1959, the Wisconsin State Legislature enacted the Wisconsin Open Meetings Law (the “OML”), substantially revised in 1973. The 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.” Wis. Stat. § 19.81(1).

The law 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. Generally, Wisconsin’s OML gives citizens the right to be present to observe government meetings, except in limited circumstances designed to protect the public interest or personal privacy concerns.

### **WHAT IS A MEETING?**

A meeting means that the public body meets with the purpose of engaging in governmental business and 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. 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. Under 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 or by the existence of a negative quorum, which is a group of a sufficient size to block a proposal. Gatherings that happen by chance or as social occasions are not covered by the OML.

### **THE OPEN MEETINGS LAW APPLIES TO PUBLIC BODIES**

A “public body” or “governmental body” means the same thing under the Act. Such bodies include state or local agencies, commissions, departments, and councils. The OML 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 OML. The Act also 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 also covered.

### **WHAT DOES IT MEAN TO BE OPEN?**

#### **Public Notice**

The OML requires the government body to provide at least 24-hours of notice of a meeting, unless legitimate circumstances make such notice impractical or impossible. The notice must alert the public, media outlets 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.

#### **Agenda**

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 likely to satisfactorily inform members of the public and news media, though notice does not need to contain a detailed agenda. Public bodies are prohibited from using

general designations, such as “miscellaneous business” or “agenda revisions” as a means to raise a broad range of subjects. The Wisconsin Attorney General has suggested that a good benchmark for a public body 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.

## **CONVENIENCE**

The OML does not explicitly provides the right to any member of the public to speak or comment during a meeting, however, most public bodies permit public comment at general meetings, subject to rules established by the public body for maintaining order. In addition, with certain limited exceptions, state agencies are required to give notice and hold a public hearing before making administrative rules. At the public hearing, the agency is required to “[a]fford each interested person or representative the opportunity to present facts, opinions or arguments in writing, whether or not there is an opportunity to present them orally.” Wis. Stat. § 227.18.

## **RECORDING PUBLIC 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 residents who wish to tape, film or photograph a meeting in open session.

## **RECORDING CLOSED MEETINGS**

The OML requires that motions and roll call votes from closed sessions be recorded and made available to the public. Secret ballots may not be used except for the election of officers of the public body.

## **WRITTEN MINUTES**

Notably, public bodies do not need to keep detailed minutes of their meetings for open 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 likely is not a sufficient means for recording votes. However, other state laws require the county, village, and city clerks to keep a record of proceedings of their governing bodies. The following summarizes these requirements:

- **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 attends the meetings of the city council and keeps a full record of the city council’s proceedings.

## **WHEN MAY A PUBLIC BODY CLOSE A MEETING OR HOLD AN EXECUTIVE SESSION?**

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 public 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. Note that the notice and agenda requirements for a closed meeting are the same as those for an open meeting.

If the body wants to reconvene in open session within 12 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.

Public bodies may, but are not required, to hold closed meetings in the following circumstances:

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.
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.

## **WHAT TO DO IF AN OPEN MEETINGS LAW VIOLATION IS SUSPECTED**

There are no administrative channels for contesting a violation under the OML. Therefore, if one suspects that a violation has occurred, only the courts can provide relief. Both the Wisconsin Attorney General and a district attorney have the authority to enforce the OML. The 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. Thus, one may bring an action for an OML violation if the district attorney does not do so in the 20-day period, but must do so no more than two years after the alleged violation to file a lawsuit.

Civil penalties are available for violations. The available general remedies are forfeiture, mandamus, injunction and

declaratory judgment. Upon finding a violation of the OML, a court may prescribe various remedies. For example, the court may, as fairness and justice require:

- Open the closed meeting to the public;
- Issue an injunction to prevent future violations;
- Order a public official who violates the Act to pay damages of between \$25 and \$300 for each violation; or
- Void any final action taken during a wrongfully closed session.

In addition, successful plaintiffs are generally awarded attorneys' fees.

## **STRENGTHS OF THE LAW**

Following are a summary of several strengths of the Wisconsin Open Meetings Law:

- The greatest strength of the OML is its broad coverage.
- The OML provides individuals with access to courts to enforce violations. Individuals have standing to file complaints if the district attorney refuses to begin an enforcement action within 20 days of receiving a complaint. This provision places a deadline on the district attorney for acting on a complaint and ensures that individuals have timely access to courts when enforcement officers are unwilling to pursue a complaint.
- The OML establishes a powerful set of penalties for violations. Public officials who violate the law are subject to fines of between \$25 and \$300 for each violation. These penalties serve not only to punish violations, but also to deter them.
- Wisconsin has remarkable open government resources for the public. The Wisconsin Attorney General has

recently scheduled a series of open government training seminars 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.

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## **RECOMMENDATIONS FOR REFORM**

Following are a summary of several weaknesses of the Wisconsin Open Meetings Law and potential reforms:

- Enforcement of the OML is weak. Reports suggest that the agencies responsible for the enforcement of the Act are unwilling to pursue open meetings complaints. Often, residents must initiate litigation to avail themselves of their rights. Wisconsin would benefit tremendously from better coordination between the Attorney General's Office, local government bodies and local law enforcement officials to monitor open meetings violations.

- The notice period for an open meeting (24 hours) is too short. In practice, the 24-hour notice period prevents individuals from adequately planning and preparing to attend meetings. This problem is particularly acute for meetings of the State Legislature, which may be located completely across the state from where interested advocacy groups or citizens reside. Moreover, reports indicate that certain favored groups are notified in advance of meetings, while others only get the brief statutory notice. The notice period should be expanded.
- Governmental bodies are not required by law to keep detailed minutes of their meetings for open or closed sessions. The OML merely requires that motions and roll call votes from closed sessions be recorded and made available to the public. This has the unfortunate consequence of preventing anyone unable to attend the meeting from finding out what transpired in any amount of sufficient detail. The law should require that detailed minutes be kept and disclosed within a set time period.

## FOR MORE INFORMATION

This contains a general description of the Wisconsin Public Records Law and Open Meetings Act as well as suggestions for how to use these laws effectively. For specific language, consult the legislation itself. For the Public Records Law, see Wis. Stat. § 19.31 *et seq.* For the Open Meetings Act, see Wisc. Stat. § 19.81 *et seq.* For access to federal records, consult the federal Freedom of Information Act, 5 U.S.C. § 552.

## DISCLAIMER

This guide is not intended to be legal advice, but only an overview of open government laws. You are advised to consult an attorney before taking any legal action. References to procedures and laws are only summaries and are not meant to be complete or all encompassing. If you have questions or desire further information, call (630) 833-4080.

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