

**WISCONSIN PUBLIC RECORDS LAW
PROPOSED STATUTORY REVISIONS**

19.31 Declaration of policy.

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. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

19.32 Definitions. As used in ss. 19.33 to 19.39:

(1) “Authority” means any of the following having custody of a record: 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; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; 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, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.

(1b) “Committed person” means a person who is committed under ch. 51, 971, 975 or 980 and who is placed in an inpatient treatment facility, during the period that the person’s placement in the inpatient treatment facility continues.

(1bg) “Employee” means any individual who is employed by an authority, other than an individual holding local public office or a state public office, or any individual who is employed by an employer other than an authority.

(1c) “Incarcerated person” means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement for which the person has been sentenced.

(1d) “Inpatient treatment facility” means any of the following:

(a) A mental health institute, as defined in s. 51.01 (12).

(c) A facility or unit for the institutional care of sexually violent persons specified under s. 980.065.

(d) The Milwaukee County mental health complex established under s. 51.08.

(1de) “Local governmental unit” has the meaning given in s. 19.42 (7u).

(1dm) “Local public office” has the meaning given in s. 19.42 (7w), and also includes any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency, or division of the local governmental unit, but does not include any office or position filled by a municipal employee, as defined in s. 111.70 (1) (i).

(1e) “Penal facility” means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

(1m) “Person authorized by the individual” means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of a child, as defined in s. 48.02 (2), the guardian of an individual adjudicated incompetent in this state, the personal representative or spouse of an individual who is deceased, or any person authorized, in writing, by the individual to exercise the rights granted under this section.

(1r) “Personally identifiable information” has the meaning specified in s. 19.62 (5).

(2) “Record” means 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. “Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. “Record” also includes reports prepared under contract by outside parties and submitted for review by the authority who requested the report and reports prepared by one agency and submitted to another or other public offices or authorities for review. “Record” includes, but is expressly not limited to: (i) administrative manuals, procedural rules, and instructions to staff, unless exempted by this act; (ii) final opinions and orders made in the adjudication of cases, except an educational institution’s adjudication of student or employee grievance or disciplinary cases; (iii) substantive rules; (iv) statements and interpretations of policy which have been adopted by an authority; (v) final planning policies, recommendations, and decisions; (vi) factual reports, inspection reports, and studies whether prepared by or for the authority; (vii) all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of authorities; (viii) the names, salaries, titles, dates of employment, and employment contracts of all employees and officers of authorities; (ix) materials containing opinions concerning the rights of the state, the public, a subdivision of state or a local government, or of any private persons; (x) the name of every official and the final records of voting in all proceedings of authorities; (xi) applications for any contract, permit, grant, or agreement except as exempted from disclosure by this act; (xii) each report, document, study, or publication prepared by independent consultants or other independent contractors for the authority; (xiii) all other information required by law to be made available for public inspection or copying; and (xiv) contracts and all supporting information relating to any grant or contract made by or between an authority and another authority or private organization. “Record” does not include drafts, notes, preliminary

computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(2g) "Record subject" means an individual about whom personally identifiable information is contained in a record.

(3) "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

(4) "State public office" has the meaning given in s. 19.42(13), but does not include a position identified in s. 20.923 (6) (f) to (gm).

19.33 Legal custodians.

(1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elected officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) The cochairpersons of a joint committee of elected officials, or the designee of the cochairpersons, are the legal custodians of the records of the joint committee.

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employee of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employees of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35 (4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

(8) No elected official of a legislative body has a duty to act as or designate a legal custodian under sub. (4) for the records of any committee of the body unless the official is the highest ranking officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or by law.

19.34 Procedural information.

(1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office or a state public office. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which

records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

19.345 Time computation. In ss. 19.33 to 19.39, when a time period is provided for performing an act, whether the period is expressed in hours or days, the whole of Saturday, Sunday, and any legal holiday, from midnight to midnight, shall be excluded in computing the period.

19.35 Access to records; fees.

(1) RIGHT TO INSPECTION.

(a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(am) In addition to any right under par. (a), any requester who is an individual or person authorized by the individual, has a right to inspect any record containing personally identifiable information pertaining to the individual that is maintained by an authority and to make or receive a copy of any such information. The right to inspect or copy a record under this paragraph does not apply to any of the following:

1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

2. Any record containing personally identifiable information that, if disclosed, would do any of the following:

a. Endanger an individual's life or safety.

b. Identify a confidential informant.

c. Endanger the security, including the security of the population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85 (2) (bg), juvenile correctional facility, as defined in s. 938.02 (10p), secured residential care center for children and youth, as defined in s. 938.02 (15g), mental health institute, as defined in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s. 980.065, for the institutional care of sexually violent persons.

d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility identified in subd. 2. c.

3. Any record that is part of a records series, as defined in s. 19.62 (7), that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record which appears in written form. If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

(c) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a comprehensible audio tape recording a copy of the tape recording substantially as audible as the original. The authority may instead provide a transcript of the recording to the requester if he or she requests.

(d) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a video tape recording a copy of the tape recording substantially as good as the original.

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper or electronic format.

(em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the form of a voice recording which the authority is required to withhold or from which the authority is required to delete information under s. 19.36 (8) (b) because the handwriting or the recorded voice would identify an informant, the authority shall provide to the requester, upon his or her request, a transcript of the record or the information contained in the record if the record or information is otherwise subject to public inspection and copying under this subsection.

(f) Except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (b) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a

sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (am), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

~~(L) This Section requires an authority to create a new public record if the public body can create the record by reasonable use or manipulation of software, electronic records or Internet website records. For purposes of this Section, an authority's maintaining of records includes access to its electronic records or accounts maintained on Internet websites. Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.~~

(m)(a) Each authority shall make available for public inspection and copying copies of all records, regardless of form or format, which have been released to any person under this act and which, because of the nature of their subject matter, the authority determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(b) In making any record available to a person under this Section, an authority shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each authority shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this Section.

(c) If the authority maintains a website, each authority shall make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued or adopted.

(d) Documents shall be furnished without charge or at a reasonable reduced charge, as determined by the authority, if the person requesting the documents asks that the documents be provided in electronic form. For purposes of this subsection, "reasonable reduced charge" means the actual cost of any media used in providing the information, including but not limited to, computer disks and CDROMs, as well as the use, by any person, of the equipment of the authority to create such records, but excludes the costs of any search for and review of the

documents. If the public records request is made in person, the authority must notify the requestor if any of the requested records are available through electronic mail.

(2) FACILITIES. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1) (a), (am), (b) or (f) with facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) FEES. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

~~(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.~~

~~(c)~~ An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

~~(e)~~ An authority 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. Waiver or reduction of the fee is in the public interest if: the requester is the news media; the requester is a non-profit organization; or if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. No public records request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request, unless the person seeks a waiver or reduction in fee. In such case, the requesting person must be offered the option of either providing identifying information or stating the purpose of the request, or forfeiting the waiver or reduction in fee.

~~(f)~~ An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

(4) TIME FOR COMPLIANCE AND PROCEDURES. (a) Each authority, upon request for any record, shall, ~~as soon as practicable and without delay~~within seven business days, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(c) If an authority receives a request under sub. (1) (a) or (am) from an individual or person authorized by the individual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information pertaining to the individual that is maintained by the authority, the authority shall deny or grant the request in accordance with the following procedure:

1. The authority shall first determine if the requester has a right to inspect or copy the record under sub. (1) (a).

2. If the authority determines that the requester has a right to inspect or copy the record under sub. (1) (a), the authority shall grant the request.

3. If the authority determines that the requester does not have a right to inspect or copy the record under sub. (1) (a), the authority shall then determine if the requester has a right to inspect or copy the record under sub. (1) (am) and grant or deny the request accordingly.

(5) STANDING REQUESTS. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

~~(5)~~ RECORD DESTRUCTION. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under s. 19.37, the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

(67) ELECTED OFFICIAL RESPONSIBILITIES. No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official.

19.351 Administrative appeal

(1) Any person denied access to inspect or copy any public record may appeal the denial by sending a written notice of appeal to the head of the authority. Upon receipt of such notice the head of the authority shall promptly review the public record, determine whether under the provisions of this act such record is open to inspection and copying, and notify the person making the appeal of such determination within 7 working days after the notice of appeal.

(2) If the head of the authority fails to notify the person making the appeal in subsection (1) of this Section of the determination within 7 working days after notice of appeal, the head of the authority is subject to fines up to \$500. The person making the appeal may file a suit to assess up \$500 against the head of the authority in the court where the record is located. The court shall award reasonable attorneys' fees and costs to the person making the appeal regardless of whether the person is represented by counsel or is pro se.

(3) Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to such request if the head of the authority affirms the denial or fails to act within the time limit provided in subsection (1) of this Section.

19.356 Notice to record subject; right of action.

(1) Except as authorized in this section or as otherwise provided by statute, no authority is required to notify a record subject prior to providing to a requester access to a record containing information pertaining to that record subject, and no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record.

(2)-(a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under subs. (3) and (4). This paragraph applies only to the following records:

1. A record containing information relating to an employee that is created or kept by the authority and that is the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.
2. A record obtained by the authority through a subpoena or search warrant.
3. A record prepared by an employer other than an authority, if that record contains information relating to an employee of that employer, unless the employee authorizes the authority to provide

access to that information.

(b) Paragraph (a) does not apply to an authority who provides access to a record pertaining to an employee to the employee who is the subject of the record or to his or her representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to a collective bargaining agreement under ch. 111.

(c) Paragraph (a) does not apply to access to a record produced in relation to a function specified in s. 106.54 or 230.45 or subch. II of ch. 111 if the record is provided by an authority having responsibility for that function.

(3) Within 5 days after receipt of a notice under sub. (2) (a), a record subject may provide written notification to the authority of his or her intent to seek a court order restraining the authority from providing access to the requested record.

(4) Within 10 days after receipt of a notice under sub. (2) (a), a record subject may commence an action seeking a court order to restrain the authority from providing access to the requested record. If a record subject commences such an action, the record subject shall name the authority as a defendant. Notwithstanding s. 803.09, the requester may intervene in the action as a matter of right. If the requester does not intervene in the action, the authority shall notify the requester of the results of the proceedings under this subsection and sub. (5).

(5) An authority shall not provide access to a requested record within 12 days of sending a notice pertaining to that record under sub. (2) (a). In addition, if the record subject commences an action under sub. (4), the authority shall not provide access to the requested record during pendency of the action. If the record subject appeals or petitions for review of a decision of the court or the time for appeal or petition for review of a decision adverse to the record subject has not expired, the authority shall not provide access to the requested record until any appeal is decided, until the period for appealing or petitioning for review expires, until a petition for review is denied, or until the authority receives written notice from the record subject that an appeal or petition for review will not be filed, whichever occurs first.

(6) The court, in an action commenced under sub. (4), may restrain the authority from providing access to the requested record. The court shall apply substantive common law principles construing the right to inspect, copy, or receive copies of records in making its decision.

(7) The court, in an action commenced under sub. (4), shall issue a decision within 10 days after the filing of the summons and complaint and proof of service of the summons and complaint upon the defendant, unless a party demonstrates cause for extension of this period. In any event, the court shall issue a decision within 30 days after those filings are complete.

(8) If a party appeals a decision of the court under sub. (7), the court of appeals shall grant precedence to the appeal over all other matters not accorded similar precedence by law. An appeal shall be taken within the time period specified in s. 808.04 (1m).

(9) (a) Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office or a state public office, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under par. (b).

(b) Within 5 days after receipt of a notice under par. (a), a record subject may augment the record to be released with written comments and documentation selected by the record subject. Except as otherwise authorized or required by statute, the authority under par. (a) shall release the record as augmented by the record subject.

19.36 Limitations upon access and withholding.

(1) APPLICATION OF OTHER LAWS. Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).

(2) LAW ENFORCEMENT RECORDS. Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1).

(3) CONTRACTORS' RECORDS. Subject to sub. (12), each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority. This subsection does not apply to the inspection or copying of a record under s. 19.35 (1) (am).

(4) COMPUTER PROGRAMS AND DATA. A computer program, as defined in s. 16.971 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c).

(6) SEPARATION OF INFORMATION. If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release. The authority having custody of the record shall fulfill the requirements of this subsection regardless of whether the requester specifically requests that this section apply to his or her request.

(7) NEW RECORDS. This act requires an authority to create a new public record if the authority can create the record by reasonable use or manipulation of software, electronic records or Internet website records. For purposes of this Section, an authority's records include its electronic records or accounts maintained on Internet websites.

(78) IDENTITIES OF APPLICANTS FOR PUBLIC POSITIONS. (a) In this section, “final candidate” means each applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any state position, except a position in the classified service, or to any local public office. “Final candidate” includes, whenever there are at least 5 candidates for an office or position, each of the 5 candidates who are considered most qualified for the office or position by an authority, and whenever there are less than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a group of more than 5 candidates, “final candidate” also includes each candidate in the group.

(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for appointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

(89) IDENTITIES OF LAW ENFORCEMENT INFORMANTS. (a) In this subsection:

1. “Informant” means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement agency or under circumstances in which a promise of confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.

b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.

2. “Law enforcement agency” has the meaning given in s. 165.83 (1) (b), and includes the department of corrections.

(b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under s. 19.35 (1) (a) that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied

without identifying the informant, shall withhold the record unless the legal custodian of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

| (910) RECORDS OF PLANS OR SPECIFICATIONS FOR STATE BUILDINGS. Records containing plans or specifications for any state–owned or state–leased building, structure or facility or any proposed state–owned or state–leased building, structure or facility are not subject to the right of inspection or copying under s. 19.35 (1) except as the department of administration otherwise provides by rule.

| (101) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records containing the following information, except to an employee or the employee’s representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch. 111:

(a) Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

(b) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation.

(c) Information pertaining to an employee’s employment examination, except an examination score if access to that score is not otherwise prohibited.

(d) Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

| (142) RECORDS OF AN INDIVIDUAL HOLDING A LOCAL PUBLIC OFFICE OR A STATE PUBLIC OFFICE. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records, except to an individual to the extent required under s. 103.13, containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local public office or a state public office, unless the individual authorizes the authority to provide access to such information. This subsection does not apply to the home address of an individual who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

| (123) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is specifically authorized or required by statute, an authority shall not provide access to a record prepared or

provided by an employer performing work on a project to which s. 66.0903, 103.49, or 103.50 applies, or on which the employer is otherwise required to pay prevailing wages, if that record contains the name or other personally identifiable information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information. In this subsection, “personally identifiable information” does not include an employee’s work classification, hours of work, or wage or benefit payments received for work on such a project.

(134) FINANCIAL IDENTIFYING INFORMATION. An authority shall not provide access to personally identifiable data that contains an individual’s account or customer number with a financial institution, as defined in s. 134.97 (1) (b), including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law.

(15) PRIVATIZATION. If an authority enters into a contract with a private person to perform any of its functions, the authority shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this act and that the private person must comply with those requirements as if it were an authority.

19.365 Rights of data subject to challenge; authority corrections.

(1) Except as provided under sub. (2), an individual or person authorized by the individual may challenge the accuracy of a record containing personally identifiable information pertaining to the individual that is maintained by an authority if the individual is authorized to inspect the record under s. 19.35 (1) (a) or (am) and the individual notifies the authority, in writing, of the challenge. After receiving the notice, the authority shall do one of the following:

(a) Concur with the challenge and correct the information.

(b) Deny the challenge, notify the individual or person authorized by the individual of the denial and allow the individual or person authorized by the individual to file a concise statement setting forth the reasons for the individual’s disagreement with the disputed portion of the record. A state authority that denies a challenge shall also notify the individual or person authorized by the individual of the reasons for the denial.

(2) This section does not apply to any of the following records:

(a) Any record transferred to an archival depository under s.16.61 (13).

(b) Any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy of the record.

19.37 Enforcement and penalties.

(1) MANDAMUS. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester

may pursue either, or both, of the alternatives under pars. (a) and (b) once he or she has exhausted the administrative remedies set forth in Section 19.351. Except as to causes the court considers to be of greater importance, proceedings arising under this section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(c) The district attorney or the Attorney General may bring a civil or criminal action to enforce this act.

(1m) TIME FOR COMMENCING ACTION. No action for mandamus under sub. (1) to challenge the denial of a request for access to a record or part of a record may be commenced by any committed or incarcerated person later than 90 days after the date that the request is denied by the authority having custody of the record or part of the record.

(1n) NOTICE OF CLAIM. Sections 893.80 and 893.82 do not apply to actions commenced under this section.

(2) COSTS, FEES AND DAMAGES.

(a) Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than \$1,000, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a). Attorneys' fees and costs shall be awarded regardless of whether the requester is represented by counsel or is pro se. If the requester is a committed or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) As soon as a lawsuit has been filed, the authority may not avoid the penalties set forth in this section by providing the requester, district attorney or the Attorney General with copies of the requested public records or by allowing the requested inspection of the public records.

(bc) In any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that the authority acted in a willful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.

(3) PUNITIVE DAMAGES. If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court ~~may~~shall award punitive damages to the requester.

(4) CIVIL PENALTY. Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required to forfeit not more than \$1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(5) CRIMINAL PENALTY. Any person who willfully violates the provisions of this act is guilty of a misdemeanor.

(6) EMPLOYMENT PENALTY. Willful violation of this section by any authority's employee constitutes just cause for suspension without pay or dismissal of the employee.

19.39. Independent regulatory body.

Effective January 1, 2010, the legislative branch of the state government shall create an independent regulatory body in the office of the Office of the Attorney General with the power and authority to enforce this act.

19.40 Reporting requirement.

Sec. 13. (a) All authorities that receive state funds must, by April 1 of each year, file with the Office of the Attorney General a report on the authority's handling of requests under the act during the previous calendar year.

(b) The report must include at least the following: the number of requests received; a description the each type or category of records requested including the number of requests in each type or category of records; and the number of requests fully satisfied by the authority, the number of requests fully denied by the authority and the reasons for the denials.

(c) The report shall be considered a "public record" within the meaning of this act.

(d) In the event that an authority fails to comply with this act, the Attorney General shall be authorized to order the Comptroller to withhold five percent of the authority's state funds in the following fiscal year until the report is submitted.

19.41. Role of the Office of the Attorney General.

Sec. 14. (a) The Office of the Attorney General serves the following purposes: offering education and training programs to government officials; the public and the media; answering questions concerning this act; working to resolve disputes under this act; and working to ensure compliance with the act.

(b) In furtherance of those purposes, the Office of the Attorney General may, at the Office's discretion, issue opinions regarding an authority's compliance with the act in regard to a specific request for records.

(c) If there is a proceeding under Section 19.37 of this act and the Office of the Attorney General has previously issued an opinion that the public records sought in the proceeding shall be disclosed but the authority refuses to comply within a reasonable time, upon motion of the plaintiff, the court may consider the authority's refusal willful and act in accordance with Section 19.37 of this act.

19.4239 Interpretation by the Office of the Attorney gGeneral.

Any person may request advice from the Office of the Aattorney gGeneral as to the applicability of this subchapter under any circumstances. The Office of the Aattorney gGeneral may respond to such a request.