☞ **99hr_AC-GO_Misc_pt02**

☞ Details: Miscellaneous committee information and correspondence

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

1999-2000
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Government Operations...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (November 2012)

STATE OF WISCONSIN

LEGISLATIVE COUNCIL STAFF

David J. Stute
Director

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Madison, WI 53701-2536
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leg.council@legis.state.wi.us

January 8, 1999

TO: ASSEMBLY CHAIRPERSONS

FROM: Jane R. Henkel, Deputy Director

SUBJECT: Sample Committee Procedures

The attachments to this memorandum contain samples of materials that have been used in the past by some committee chairpersons to establish committee procedures or to guide the conduct of hearings or executive sessions.

Attachments A, B and C establish general guidelines for committee operations, but do not provide a great deal of detail. This approach provides flexibility but, since there is not a lot of detail, may require establishment of additional policies as questions arise in the future.

Attachments D and E are examples of a more detailed set of policies and procedures. While this approach gives clear guidance to committee members, exceptions may have to be made on occasion, to avoid being forced into an undesirable result.

Attachment F furnishes an outline of comments which may be used by a committee chairperson at the beginning of a public hearing. It is structured so that the chairperson covers the points in his or her own words.

Attachment G also provides an example of a chairperson's comments for the beginning of a public hearing. This example is "scripted" to provide details for the opening remarks.

The Legislative Council staffperson assigned to your committee is available to discuss with you the various approaches taken in Attachments A to E and to assist you in adapting any of the attached materials to your particular needs. Because of the range of examples, it is important that you select the degree of generality or specificity with which you are most comfortable.

Please contact me or your assigned Legislative Council Staff member if you have further questions or requests regarding any of these materials.

JRH:wu;jal
Attachments

ASSEMBLY COMMITTEE ON EDUCATION

POLICIES AND PROCEDURES

MEETING DAYS-

PUBLIC HEARINGS:

Room 417 North (GAR) is the regularly assigned meeting room. Odd Tuesdays, according to the odd-even legislative calendar, are the assigned hearing days for the committee. The chair will make every effort to start hearings promptly on meeting days.

EXECUTIVE SESSION:

Will be held on assigned Committee days following public hearings whenever possible but may be scheduled on other days when necessary.

ATTENDENCE AND VOTING:

If a member is absent for a hearing or an executive session and the committee clerk is notified it will be counted as an excused absence.

After the roll is called for a public hearing, the roll will remain open for absent members until the hearing is adjourned. Members who are tardy for the attendance roll call must announce their presence to the chairman in the presence of the committee in order to ensure they are recorded as present. Do not rely on the committee clerk to automatically note your arrival if you are not present during the roll call.

A member must be present in order to be recorded as voting. After the attendance roll is called for an executive session, the attendance roll will be left open for absent members until the executive session is adjourned. The voting roll may be held open until the adjournment of the executive session in

order to allow all members who have indicated their presence to vote. If an absent member is unable to vote before the roll is closed, the absent member may, before the proposal is reported out of committee, have the committee report reflect how the member would have voted had he or she been present.

AMENDMENTS:

All amendments shall be submitted to the Committee Clerk at least twenty four hours before an executive session. The chairman does recognize that meeting this deadline is not always possible, however, the 24 hour deadline should be met whenever possible.

ATTACHMENT B

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON JUDICIARY

FROM: Representative Mark Green, Chairperson

DATE: January 8, 1997

SUBJECT: General Guidelines for Assembly Judiciary Committee Proceedings

As Chair of the Assembly Committee on Judiciary, I intend to preside over Committee proceedings in a fair and consistent manner. Meaningful public and committee participation and development of proposals that accurately reflect the recommendation of the Committee and that are in proper form for floor debate are among my goals.

The Judiciary Committee is a relatively small Committee and many of the issues that come before it are of a relatively technical and largely nonpartisan nature. I believe the Committee will be able to work in a collegial, informal fashion on most issues and, therefore, I do not intend to establish many procedural rules unless it proves necessary (recognizing that the Assembly rules already outline some basic procedure for Committee proceedings.) Initially, however, I would like to establish the following as general guidelines for the Judiciary Committee to follow during this legislative session:

1. I would like to start hearings and executive session in a timely fashion; please notify my office if you are unable to attend or will be late.

2. Amendments to proposals to be taken up in executive session should be in written from, preferably drafted either by Legislative Council staff or the Legislative Reference Bureau. Further, amendments, with the possible exception of minor technical and other noncontroversial amendments, should be distributed to all members and to Legislative Council staff at least 24 hours in advance of an executive session.

3. Committee members must be present while the Committee is in session in order to vote {see Assembly Rule 11 (4)}. If a member is absent while a vote is taken in executive session, the roll will usually be held open until the executive session is completed in order to permit the absent member to vote. If a Committee member is unable to vote during a Committee executive session, the member may contact the Committee clerk to indicate how he or she would have voted if present (but that member's vote will not be included in the vote on the Committee's recommendation.)

The above are guidelines and those familiar with the legislative process know that circumstances do not always permit consistent application of such guidelines (although I will attempt to strictly apply the requirement that members cast a vote in the presence of the Committee.)

I am honored to serve as Chairperson of the Assembly Committee on Judiciary and look forward to working with you for a productive legislative session.

Scott Gunderson
Wisconsin State Legislature
83rd Assembly District Representative

ATTACHMENT C

MEMO

Date: February 11, 1997

From: State Rep. Scott Gunderson

To: ASSEMBLY COMMITTEE ON URBAN AND LOCAL AFFAIRS

Re: General Guidelines for Proceedings of the Assembly Urban and Local Affairs Committee

---

Welcome to the Assembly Committee on Urban and Local Affairs. As Chairperson of the Committee, I am establishing some general guidelines for Committee proceedings that I believe will assist us in performing the Committee's functions. My goals for the Committee include adequate notice of Committee meetings, meaningful participation by the public and Committee members and careful scrutiny and development of proposals before they are voted upon by the Committee.

I intend to operate the Urban and Local Affairs Committee in a fair, but flexible, manner. Therefore, I intend to keep the Committee's operating guidelines at a minimum, recognizing that Assembly rules already establish some procedural rules for Committee proceedings.

The initial guidelines I am establishing for Urban and Local Affairs Committee proceedings during this legislative session are:

1. Hearings and executive sessions will start on time; please notify my office if you are unable to attend or will be late.

2. Ordinarily, executive sessions will not be held on the same day that a public hearing is held on a proposal.

3. Amendments to proposals to be taken up in executive session should be in written form, preferably drafted either by Legislative Council Staff or the Legislative Reference Bureau. Further, amendments, with the possible exception of minor technical and other non-controversial amendments, should be distributed to all members and to Legislative Council Staff at least 24 hours in advance of an executive session.

Office: P.O. Box 8952, State Capitol • Madison, Wisconsin 53708-8952 • Telephone: (608) 266-3363 • Hotline: (800) 362-9472
District: 28918 Kramer, Drive • Waterford, Wisconsin 53185 • (414) 534-9015

Scott Gunderson
Wisconsin State Legislature
83rd Assembly District Representative

4. Committee members must be present while the Committee is in session in order to vote. (See Assembly Rule 11(4).) If a member is absent while a vote is taken in executive session, the roll will usually be held open until the executive session is completed in order to permit the absent member to vote. If a Committee member is unable to vote during a Committee executive session, the member may contact the Committee Clerk to indicate how he or she would have voted if present (but that member's vote will not be included in the reported vote on the Committee's recommendation).

5. To the extent possible, I will try to hold hearings only on proposals for which a hearing notice is provided in the Weekly Schedule of Committee Activities and which have been introduced.

Given time constraints and the nature of the legislative process, strict adherence to the above guidelines will not always be possible. Adherence to the guidelines, however, should be the rule and not the exception.

I am honored to serve as Chairperson of the Assembly Committee on Urban and Local Affairs and look forward to working with you during the session.

Office: P.O. Box 8952, State Capitol • Madison, Wisconsin 53708–8952 • Telephone: (608) 266–3363 • Hotline: (800) 362–9472
District: 28918 Kramer, Drive • Waterford, Wisconsin 53185 • (414) 534–9015

ATTACHMENT D

DuWayne Johnsrud

State Representative

DATE: January 17, 1995

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON NATURAL RESOURCES

FROM: Representative DuWayne Johnsrud, Chairperson

SUBJECT: Guidelines for the Conduct of Business by the Assembly Committee on Natural Resources

My main goals for the Assembly Committee on Natural Resources are to provide the citizens of this state with a meaningful way to participate in legislative deliberations, to make sure that bills and resolutions reflect the wishes of the majority of Committee members and are in proper form for legislative debate and to ensure that administrative rules comply with statutory authority and are consistent with legislative intent. In order to achieve these goals, I intend to observe the following guidelines for conducting Committee business. While it will obviously not be possible to follow these guidelines in all circumstances, I intend that these guidelines will be the rule, rather than the exception.

1. Hearings and executive sessions will start on time.

2. Hearings will be conducted on introduced bills and resolutions only.

3. Hearings will be conducted only on bills and resolutions for which a hearing notice is provided in the weekly schedule of committee activities.

4. Executive sessions will not be held on the same day that a public hearing is held on the proposal. [Exceptions to this guideline will be provided for administrative rules, if necessary, due to the deadline for Committee action.]

5. No executive session will be held on any proposal that has not had a public hearing before the Committee.

6. Any amendment or substitute amendment must be in written form, drafted either by Legislative Council Staff or the Legislative Reference Bureau, in order to be taken up at an executive session.

Office: Post Office Box 8952, Madison, Wisconsin 53708 ★ (608) 266-3534

7. Amendments and substitute amendments must be distributed to all members and to Legislative Council Staff at least 24 hours in advance of an executive session in order to be taken up at the executive session.

8. Committee members must be present while the Committee is in session in order to vote. No mail ballots or proxy votes will be allowed. If an executive session is held before the Committee hearing is adjourned, the roll will be held open until adjournment of the hearing to allow members to vote. After the public hearing and executive session are adjourned, members may contact the committee clerk to indicate how they would have voted if they had been present.

DJ:lr

Assembly Committee on Criminal Justice and Corrections

Policies and Procedures

(1) MEETING DAYS

A. PUBLIC HEARINGS: ROOM 415 NORTHWEST IS THE REGULARLY ASSIGNED MEETING ROOM ON ALTERNATING THURSDAYS. THE CHAIR WILL MAKE EVERY EFFORT TO START PUBLIC HEARINGS ***PROMPTLY*** AT 10:00 A.M. ON MEETING DAYS.

B. EXECUTIVE SESSIONS: WILL BE HELD FOLLOWING PUBLIC HEARINGS WHENEVER POSSIBLE BUT MAY BE SCHEDULED ON OTHER DAYS WHEN NECESSARY.

Every effort will be made to accommodate the schedules of the respective committee members whenever possible.

(2) ATTENDANCE

A. "EXCUSED" ABSENCES: THE RECORD OF COMMITTEE PROCEEDINGS WILL NOTE AN "EXCUSED" ABSENCE ONLY WHEN THE CHAIRMAN IS NOTIFIED AT LEAST ONE HOUR BEFORE THE SCHEDULED START OF A COMMITTEE MEETING.

Without the notification, the committee record will reflect that a member simply is "absent."

B. ROLL CALL--PUBLIC HEARINGS: AFTER THE ROLL IS CALLED FOR A PUBLIC HEARING, THE ROLL WILL BE LEFT OPEN FOR ABSENT MEMBERS UNTIL THE HEARING IS ADJOURNED. MEMBERS WHO ARE TARDY FOR THE ATTENDANCE ROLL CALL MUST ANNOUNCE THEIR PRESENCE TO THE CHAIRMAN IN THE PRESENCE OF THE COMMITTEE IN ORDER TO ENSURE THEY ARE RECORDED AS PRESENT.

Do not rely on the committee clerk to automatically note your arrival if you are not present during the call of the roll. By announcing your presence to the chair, your presence will be duly reflected in the committee record.

C. ROLL CALL--EXECUTIVE SESSIONS: AFTER THE ATTENDANCE ROLL IS CALLED FOR AN EXECUTIVE SESSION, THE ATTENDANCE ROLL WILL BE LEFT OPEN FOR ABSENT MEMBERS UNTIL THE EXECUTIVE SESSION IS ADJOURNED.

1. MEMBERS WHO ARE TARDY FOR THE ATTENDANCE ROLL CALL MAY ESTABLISH THEIR PRESENCE BY CASTING A VOTE DURING THE EXECUTIVE SESSION.

2. A MEMBER MUST BE PRESENT IN ORDER TO BE RECORDED AS VOTING.

3. THE VOTING ROLL MAY BE HELD OPEN UNTIL THE ADJOURNMENT OF THE EXECUTIVE SESSION IN ORDER TO ALLOW ALL MEMBERS WHO HAVE INDICATED THEIR PRESENCE TO VOTE. HOWEVER, ABSENT MEMBERS MUST RETURN AND VOTE IN THE PRESENCE OF THE COMMITTEE IN ORDER FOR THE VOTE TO BE RECORDED.

4. THE VOTING ROLL WILL BE CLOSED AFTER ALL MEMBERS WHO HAVE INDICATED THEIR PRESENCE HAVE VOTED.

5. IF AN ABSENT MEMBER IS UNABLE TO VOTE BEFORE THE ROLL IS CLOSED, THE ABSENT MEMBER MAY, BEFORE THE PROPOSAL IS REPORTED OUT OF COMMITTEE, HAVE THE COMMITTEE REPORT REFLECT HOW THE MEMBER WOULD HAVE VOTED HAD HE OR SHE BEEN PRESENT.

6. IF THERE ARE NO VOTES CAST DURING AN EXECUTIVE SESSION, A MEMBER WHO IS TARDY FOR THE ATTENDANCE ROLL CALL MUST ANNOUNCE HIS OR HER PRESENCE TO THE CHAIRMAN IN THE PRESENCE OF THE COMMITTEE IN ORDER TO BE RECORDED AS PRESENT.

3. MOTIONS

A. NO UNANIMOUS CONSENT: ALL MOTIONS ENTERTAINED WILL BE CONSIDERED MOTIONS FOR A ROLL CALL VOTE. NO VOTES WILL BE TAKEN BY UNANIMOUS CONSENT.

This policy affords members the greatest opportunity to vote their conscience and avoids the confusion that can result when members are not present when the motion is made but arrives later and wants to record his or her vote.

B. INTRODUCTION AND ADOPTION OF AMENDMENTS: MOTIONS TO INTRODUCE AND ADOPT AMENDMENTS WILL BE CONSIDERED TWO DIVISIBLE MOTIONS AND WILL BE TAKEN UP SEPARATELY.

4. DRAFTING AMENDMENTS

A. 24-HOUR POLICY: MOTIONS TO INTRODUCE AMENDMENTS SUBMITTED TO THE COMMITTEE LESS THAN 24 HOURS BEFORE A SCHEDULED EXECUTIVE SESSION WILL NOT BE ENTERTAINED.

Time is needed to read, copy and distribute the amendment. If a proposal receives executive action on the same day it receives a public hearing, accommodations will be made for any amendments that may be needed.

B. LRB DRAFTING REQUESTS: PLEASE DO NOT ASK THE LRB TO DRAFT AMENDMENTS FOR SUBMISSION TO THE COMMITTEE IF THE 24-HOUR POLICY CANNOT BE SATISFIED.

Let the drafters work on more urgent requests and save the amendment for the floor.

C. AMENDMENTS NOT IN WRITTEN FORM: ONLY AMENDMENTS THAT ARE IN WRITTEN FORM ARE PROPER SUBJECTS OF A MOTION FOR ADOPTION.

If there is a need for an amendment that is not in written form, it must be put in writing before the committee will act on it. Executive action on the proposal may be held over when necessary.

5. PUBLIC HEARINGS

A. TIME LIMIT: THE CHAIRMAN MAY LIMIT PUBLIC TESTIMONY TO 5 MINUTES PER SPEAKER. LATITUDE MAY BE GIVEN AT THE CHAIRMAN'S DESCRETION—PARTICULARLY TO PRIMARY AUTHORS. THE CHAIRMAN GENERALLY WILL ASK QUESTIONS BEFORE YIELDING TO OTHER MEMBERS.

B. WRITTEN TESTIMONY: PREFERENCE IS TO HAVE WRITTEN TESTIMONY MADE AVAILABLE FOR DISTRIBUTION TO COMMITTEE MEMBERS RATHER THAN HAVING PUBLIC WITNESSES READ IT TO THE COMMITTEE.

6. PER DIEM SLIPS

PLEASE COMMUNICATE TO LEGISLATORS WHO ARE NOT COMMITTEE MEMBERS THAT **PER DIEM SLIPS WILL BE ACCEPTED <u>ONLY</u> WHEN PERSONALLY DELIVERED BY THE NON-MEMBERS.**

ATTACHMENT F

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE:

TO:

FROM: Mark C. Patronsky, Senior Staff Attorney

SUBJECT: Chairperson's Comments at the Beginning of a Public Hearing

The following is a list of suggested comments for you to make as Chairperson of the Assembly Committee on ***fill in*** at the commencement of a public hearing on a bill, resolution or administrative rule. The intent of these comments is to inform citizens who may not be familiar with legislative committee procedures about how the hearing will be conducted.

1. Welcome the "real people" who took the time to attend the hearing and thank them for their interest in the subject.

2. Explain the green hearing slips.

   a. In addition to ***speaking*** for, against or for information, people can ***register*** for or against a proposal, which will be noted in the committee record.

   b. Ask anyone who has time constraints to indicate this on the hearing slip, so that you can attempt to accommodate these needs if possible.

3. Introduce the Assembly page and note that the page will distribute any written testimony or materials that need to be given to committee members.

4. Announce the five-minute time limit (or other time limit) on testimony. The best explanation for the time limit is that it is a matter of fairness, so that everyone has a chance to speak to the committee.

5. Ask speakers to avoid repeating testimony that was previously given. Tell them that anyone is free to give up the chance to speak because his or her arguments were made by other speakers by requesting, when called, that their hearing slip be changed from "speaking" to "registering."

6. Discourage the reading of written testimony. This is best explained by saying that informal remarks are more effective than those which are read. Offer to reproduce any written remarks and distribute them to committee members after the hearing. Note that the time limit will also apply to those who read written remarks.

7. If it appears that the hearing will be controversial and that there are strong feelings on either side of the issue:

a. Explain that only committee members may ask questions and that questions will not be taken from the audience.

b. Warn people that demonstrations of support or opposition such as boos or applause are not appropriate. This is best explained by saying that committee members are there to obtain information; they are not swayed by audience responses; and that the hearing will proceed more quickly without these demonstrations.

8. Explain that committee members may need to come and go occasionally because they are members of other committees which are meeting at the same time.

9. If the committee will not be voting on the proposal that same day, indicate that the purpose of the hearing is to take testimony and that voting will be scheduled for a later date. Indicate that citizens can contact the toll-free legislative hotline to obtain information about further committee action on any proposal.

10. State the order of business for the public hearing.

a. Indicate the order in which bills, resolutions and rules will be taken up.

b. Indicate whether a lunch break will be taken.

c. If an executive session is scheduled, indicate when the committee will convene in executive session.

11. State that alternating proponents and opponents of each proposal will be attempted, to the extent possible.

MCP:lah;kja

ATTACHMENT G

August 22, 1996

HEARING PROCEDURES

I. CALL TO ORDER AND ROLL CALL

A. Call the meeting to order:

1. ***"The Senate Select Committee on Utility Regulation will come to order. Will members and visitors please take your seats."***

2. Use the gavel if the room is noisy.

B. Call the roll:

- ***"We will dispense with the calling of the roll and the clerk will note presence of Senators as they arrive."*** Randy then fills in a roll call sheet as Senators arrive.

II. WELCOME AND ANNOUNCEMENT OF THE PURPOSE OF THE HEARING

A. Welcome members of the public and thank them for coming to present their testimony.

B. ***"This is the first meeting of the Senate Select Committee on Utility Regulation. I intend to use the Select Committee to keep myself and the members informed about developments regarding utility regulation, especially regarding the PSC's ongoing activities regarding the restructuring of electric utilities."***

C. ***"The purpose of this hearing is to receive testimony from the Public Service Commission and members of the public regarding the progress of the state's multi-step process to deregulate the electric utility industry. The Committee will also accept testimony on recent out-of-state electric utility power sales."***

III. DESCRIBE THE OPERATION OF THE HEARING

A. Inform people how to register to speak:

- ***"If you would like to testify to the Committee, please fill out a hearing slip and return it to the Senate messenger. The messenger has the slips."*** Point out the messenger. ***"If you do not want to speak but want to register your position, you may do so on the same hearing slips."***

B. The order in which you will call speakers:

1. ***"To the extent possible, I will alternate between speakers with different points of view on the subjects before us."***

2. ***"If anyone has particular time constraints, including farmers, please indicate this on your hearing slip and I will try to accommodate you."***

C. Other rules you may want to establish:

1. Anyone present may register to testify, but only Committee members may ask questions of the speakers.

2. Public demonstrations of support or opposition to anything that is said in the hearing is not permitted.

3. To allow everyone a chance to speak, you may set a time limit for speakers (and you may ask Committee members to limit their questioning of speakers), especially if there are a lot of people registering to speak. You m also ask speakers to avoid repeating what previous speakers have said.

4. Speakers are asked to ***not*** read written statements, verbatim, but to summarize their remarks. When called to testify, a speaker should give any written statement to the messenger for distribution to the Committee.

D. Plans for the hearing:

1. The order in which you plan to take up topics:

- ***"So that speakers do not have to be called up twice, I will accept testimony on deregulation of the electric utility industry and on out-of-state power sales at the same time."***

2. How long the hearing is expected to last and whether you plan to break for lunch.

IV. BEGIN THE HEARING

A. Randy sorts the hearing slips for each topic by: 1) Speaking in favor; 2) Speaking in opposition; 3) Speaking for information only; 4) Registering in favor; and 5) Registering in opposition.

B. Call the first speaker. Usually, start with invited speakers, Legislators, agency heads or other dignitaries, if any are present.

C. When the speaker is through, ask the Committee members if they have any questions or pose any questions that you have.

D. When there are no more questions, thank the speaker and call the next speaker. Randy will give you the hearing slip for each speaker at the right moment.

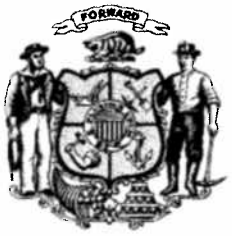
E. When calling the last speaker, announce that this is the last hearing slip you have. State that anyone else who wants to speak must fill out a hearing slip at this time.

V. ADJOURNMENT

A. Thank all those who came, once again, and if it has been a long hearing thank those who stayed until the end for their patience.

B. Declare the meeting adjourned, using the gavel if you wish.

WISCONSIN STATE LEGISLATURE



SCOTT R. JENSEN
ASSEMBLY SPEAKER

Memo

To: ALL REPRESENTATIVES

From: Speaker Scott R. Jensen

Date: January 15, 1999

Re: Open Records Law

Legislators are **legal custodians** of various records, documents and other materials in their possession. These records are subject to the Open Records Law. [ss. 19.31 to 19.39, Stats.] The "legal custodian" of records is the person to whom requests for copies of records are made and who is responsible for processing requests for access to records. A legislator **may designate an employee** on his or her staff to act as the legal custodian.

Access to public records must be allowed during established office hours. Copies of records must be provided upon request.

Please review the enclosed paper, Legislative Council Information Bulletin 99-3, Responding to Public Records Requests, which provides information on matters relating to legislative records.

If you have any questions, please let me know. You may also wish to contact the Legislative Council Staff for assistance with specific questions on the Open Records Law.

SRJ:ct

Enclosure.

STATE CAPITOL • ROOM 211 WEST • POST OFFICE BOX 8952 • MADISON, WI 53708-8952
(608) 264-6970 • FAX: (608) 266-5123 • TOLL-FREE: (888) 529-0032 • REP.JENSEN@LEGIS.STATE.WI.US

Wisconsin Legislative Council Staff
January 1999

RESPONDING TO PUBLIC RECORDS REQUESTS

INFORMATION BULLETIN 99-3*

INTRODUCTION

Much of the material in a legislator's office or kept by a legislator qualifies as a public "record" under Wisconsin's Open Records Law [ss. 19.31 to 19.39, Stats.; attached]. Therefore, this material is required by law to be available for inspection and copying by members of the public, including the news media.

The purpose of this Information Bulletin is to set forth the steps by which a legislator may deal with a request to inspect records in his or her office. Note, however, that a decision to deny access to a record should be made very carefully, since it most likely will be challenged--in court, in the news media or in partisan debate.

Legislators are strongly advised, prior to responding to a request to inspect records, to seek additional advice beyond that set out below. Legislative leaders can provide pragmatic and political advice. Legislative Council Staff can provide legal advice.

1. CLARIFY, IN ADVANCE, WHO IS THE "CUSTODIAN" OF THE OFFICE'S RECORDS

The custodian is the person who responds to a request to inspect records. Each legislator is automatically the custodian of his or her records, unless an office staff member is designated as custodian. A legislator and his or her staff should have a clear understanding of who makes the decisions when responding to a request to inspect records.

In most cases, it appears preferable that a legislator retain the role of custodian of his or her records, since the legislator is the person directly affected by an inappropriate release of records. Note, however, that in the event that a request is made during a period of time that a legislator is unavailable (e.g., a vacation), action on the request will be delayed. The law makes no provision for appointment of a temporary custodian under such circumstances.

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* This Information Bulletin was prepared by Ronald Sklansky, Senior Staff Attorney.

2. RESPOND REASONABLY PROMPTLY TO A REQUEST

A response to a record request must be made "as soon as practicable and without delay" under the law. In practical terms, a custodian may need some amount of time to retrieve and inspect the record before formulating a response. However, a prompt response, such as immediately, within the hour or within 24 hours, is desirable.

The response to a request for a record is either: (a) to provide the record; or (b) to deny the request, in whole or in part. If a written request is denied, the reasons for the denial must be given in writing.

3. RESPOND TO A REQUEST IN KIND

If the request is made orally, and is going to be denied, the denial may be made orally. If a requester who was orally denied a request later demands a written statement of denial, and the demand is made within five business days of the oral denial, the written statement must be provided.

If a request is made in writing, the response must be in writing giving the reasons for the denial. Written responses to written requests must include this statement--"This denial is subject to review by mandamus under s. 19.37 (1), Stats., or by application to the Attorney General or a district attorney."

4. DEMAND THAT A REQUEST BE REASONABLY SPECIFIC

A request must be honored if it "reasonably describes the requested record or the information requested." However, requests to go through an office's files (a "fishing expedition") do not have to be honored.

For example, requests such as the following must be given a response: "All constituent mail on Assembly Bill 000"; "the mailing list for your newsletter distribution"; "all correspondence on the Highway XO project in your district."

Also, there is no blanket exemption for constituent mail--in most cases, it is a "record."

5. SEEKING IDENTITY OF REQUESTER; PURPOSE OF REQUEST

A record request may not be denied because the requester refuses to provide identification or to state the purpose of the request. However, if the record is at a private residence, or valid security reasons exist, a requester may be required to show acceptable identification. Also, if it is known that a person making a record request is an incarcerated person or a person committed to an inpatient treatment facility, a legislator is under no obligation to respond to the request, unless:

a. The record contains specific references to the person or to his or her minor children to whom he or she has not been denied physical placement; and

b. The record is otherwise accessible to the person by law.

6. DECIDE IF THE REQUESTED MATERIAL IS A "RECORD"

A record is any material which bears information, regardless of form ("written, drawn, printed, spoken, visual or electromagnetic information") and which was created or is being kept by a custodian, **except**:

a. Personal property of the legislator which has no relation to his or her office of legislator;

b. Drafts, notes, preliminary computations and similar material prepared for the personal use of the legislator or prepared in the name of a legislator by a member of his or her staff;

c. Material to which access is limited by copyright, patent or bequest; and

d. Published materials which are available for sale or are available at a public library.

If the requested material falls into one of the above exceptions, it is not a "record" and the request may be denied for that reason.

7. MAKE A DECISION ON THE REQUEST

The Open Records Law favors inspection of public records and establishes a presumption of complete access to public records. Access may be denied only in exceptional cases--that is, under specific statutory or common law exemptions and in cases where it can be demonstrated that the harm done to the public interest by disclosure outweighs the right of access to public records.

In some instances, access to records may be denied. However, any written denial must specifically cite a statutory or common law exemption or demonstrate that there is a need to restrict public access at the time that the request is made.

The exemptions to the Open Meetings Law are used as a guide for denial. The applicable exemptions in that law are:

a. "Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body."

b. "Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a public body or the investigation of charges against such person . . . and the taking of formal action on any such matter . . . ."

c. "Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility."

d. "Deliberating or negotiating the purchasing of public properties, the investing of public funds or conducting other specific public business, whenever competitive or bargaining reasons require a closed session."

e. "Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect on the reputation of any person referred to in such histories or data, or involved in such problems or investigations."

f. "Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

g. "Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any county or municipal ethics board."

h. "Considering any and all matters related to acts by businesses under s. 560.15 (economic adjustment program where a business is shutting down or laying off employes) which, if discussed in public, could adversely affect the business, its employes or former employes."

(In addition to the above, meetings can also be closed to discuss probation or parole applications, crime fighting strategy, burial sites, ice rink operation and certain Unemployment Insurance Advisory Council and Worker's Compensation Advisory Council matters. In specific situations, these less-common grounds may be applicable to a record request made to a legislator.)

The Wisconsin Supreme Court has stated that access to information collected under a pledge of confidentiality, where the pledge was necessary to obtain the information, may be denied. The Open Records Law also exempts records from access if: (a) federal or state law requires nondisclosure; (b) the record is a computer program; or (c) the record is a trade secret. Other statutory and common law exemptions exist--a legislator can be advised of the exemptions to the Open Records Law by Legislative Council Staff.

8. PARTIAL DENIAL

If part of a record qualifies for confidential treatment, the remainder must be released. In those instances, a legislator should either separate the confidential information, or delete it, and release the remainder.

9. PROVIDE COPIES ON REQUEST

Persons having a right to inspect a record are entitled to a copy, if they ask for it. The custodian should copy the record in order to retain control over the original record. A fee for copying, which does not exceed the actual copying cost, may be charged based on per copy charges established by the Chief Clerk in each house.

RS:wu:ksm;pkc;ksm;wu

Attachment

ATTACHMENT

Sections 19.31 to 19.39, Stats.

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 employes 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 employes 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; 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; a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3); 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.

(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).

(b) The Wisconsin resource center established under s. 46.056.

(c) A secure mental health unit or facility established under s. 980.065 (2).

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

(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, as defined in s. 880.01 (3), of an individual adjudged incompetent, as defined in s. 880.01 (4), 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" 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.

(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.

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 employe 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 employe 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 employes 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 cus-

todian 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. 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.

19.35 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 of any state correctional institution, as defined in s. 301.01 (4), jail, as defined in s. 165.85 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child caring institution, 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 the population or staff of any of these institutions, facilities or jails.

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.

(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) 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.

(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 employes

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.

(d) 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.

(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, 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) 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.

(6) 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.

19.36 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. 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.

(7) 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, as defined in s. 19.42 (7w). "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.

(8) 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 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.

(9) 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.

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).

(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.

(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 $100, 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). 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) 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 wilful 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 award punitive damages to the requester.

(4) 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.

19.39 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

pay the lawful premium for the execution of the obligation out of any moneys available for the payment of expenses of the office or department, unless payment is otherwise provided for or is prohibited by law.

History: 1977 c. 339.

SUBCHAPTER II

PUBLIC RECORDS AND PROPERTY

19.21 Custody and delivery of official property and records. **(1)** Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from the officer's predecessor or other persons and required by law to be filed, deposited, or kept in the officer's office, or which are in the lawful possession or control of the officer or the officer's deputies, or to the possession or control of which the officer or the officer's deputies may be lawfully entitled, as such officers.

(2) Upon the expiration of each such officer's term of office, or whenever the office becomes vacant, the officer, or on the officer's death the officer's legal representative, shall on demand deliver to the officer's successor all such property and things then in the officer's custody, and the officer's successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(3) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than $25 nor more than $2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(4) (a) Any city council, village board or town board may provide by ordinance for the destruction of obsolete public records. Prior to the destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue. This paragraph does not apply to school records of a 1st class city school district.

(b) The period of time any town, city or village public record is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in the ordinance may not be less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board under s. 16.61 (3) (e) and except as provided under sub. (7). This paragraph does not apply to school records of a 1st class city school district.

(c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or another reproductive device, optical imaging or electronic formatting. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in ss. 16.61 (7) and 16.612. This paragraph does not apply to public records kept by counties electing to be governed by ch. 228.

(cm) Paragraph (c) does not apply to court records kept by a clerk of circuit court and subject to SCR chapter 72.

(5) (a) Any county having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records, except for court records subject to SCR chapter 72.

(b) Any county having a population of less than 500,000 may provide by ordinance for the destruction of obsolete public records, subject to s. 59.52 (4) (b) and (c), except for court records governed by SCR chapter 72.

(c) The period of time any public record shall be kept before destruction shall be determined by ordinance except that in all counties the specific period of time expressed within s. 7.23 or 59.52 (4) (a) or any other law requiring a specific retention period shall apply. The period of time prescribed in the ordinance for the destruction of all records not governed by s. 7.23 or 59.52 (4) (a) or any other law prescribing a specific retention period may not be less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

(d) 1. Except as provided in subd. 2., prior to any destruction of records under this subsection, except those specified within s. 59.52 (4) (a), at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the historical society or in which the society has indicated that it has no interest for historical purposes. Records which have a confidential character while in the possession of the original custodian shall retain such confidential character after transfer to the historical society unless the director of the historical society, with the concurrence of the original custodian, determines that such records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates.

2. Subdivision 1. does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of a local health department, as defined in s. 250.01 (4).

(e) The county board of any county may provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a records management service for the county and may appropriate funds to accomplish such purposes.

(f) District attorney records are state records and are subject to s. 978.07.

(6) A school district may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given to the historical society, which shall preserve any records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e) and except as provided under sub. (7). This section does not apply to pupil records under s. 118.125.

(7) Notwithstanding any minimum period of time for retention set under s. 16.61 (3) (e), any taped recording of a meeting, as defined in s. 19.82 (2), by any governmental body, as defined under s. 19.82 (1), of a city, village, town or school district may be destroyed no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

(8) Any metropolitan sewerage commission created under ss. 66.88 to 66.918 may provide for the destruction of obsolete commission records. No record of the metropolitan sewerage district may be destroyed except by action of the commission specifically authorizing the destruction of that record. Prior to any destruction of records under this subsection, the commission shall give at least 60 days' prior notice of the proposed destruction to the state his-

torical society, which may preserve records it determines to be of historical interest. Upon the application of the commission, the state historical society may waive this notice. Except as provided under sub. (7), the commission may only destroy a record under this subsection after 7 years elapse from the date of the record's creation, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

History: 1971 c. 215; 1975 c. 41 s. 52; 1977 c. 202; 1979 c. 35, 221; 1981 c. 191, 282, 335; 1981 c. 350 s. 13; 1981 c. 391; 1983 a. 532; 1985 a. 180 ss. 22, 30m; 1985 a. 225; 1985 a. 332 s. 251 (1); Sup. Ct. Order, 136 W (2d) xi (1987); 1987 a. 147 ss. 20, 25; 1989 a. 248; 1991 a. 39, 185, 316; 1993 a. 27, 60, 172; 1995 a. 27, 201.

Sub. (1) provides that a police chief as an officer of the municipality is the legal custodian of all records of that officer's department. Town of LaGrange v. Auchinleck, 216 W (2d) 84, 573 NW (2d) 232 (Ct. App. 1997).

Department of administration probably has authority under sub. (1) and s. 19.21 (2), 1979 stats., [now see 19.35] to provide private corporation with camera-ready copy of session laws which is product of printout of computer stored public records if costs are minimal. State cannot contract on a continuing basis for the furnishing of this service. 63 Atty. Gen. 302.

Plans and specifications filed with DILHR under s. 101.12 are public records and are available for public inspection. 67 Atty. Gen. 214.

Under sub. (1), district attorneys must preserve indefinitely papers of a documentary nature, evidencing activities of prosecutor's office. 68 Atty. Gen. 17.

Right to privacy law, s. 895.50, does not affect duties of custodian of public records under s. 19.21. 68 Atty. Gen. 68.

County under 500,000 may destroy obsolete case records maintained by county social services agency under s. 48.59 (1). 70 Atty. Gen. 196.

VTAE (technical college) district is "school district" under sub. (6). District may not maintain records on microfilm. 71 Atty. Gen. 9.

19.22 Proceedings to compel the delivery of official property. (1) If any public officer refuses or neglects to deliver to his or her successor any official property or things as required in s. 19.21, or if the property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver them to the successor in the office, the successor may make complaint to any circuit judge for the county where the person refusing or neglecting resides. If the judge is satisfied by the oath of the complainant and other testimony as may be offered that the property or things are withheld, the judge shall grant an order directing the person so refusing to show cause, within some short and reasonable time, why the person should not be compelled to deliver the property or things.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of the order issued under sub. (1), if the person complained against makes affidavit before the judge that the person has delivered to the person's successor all of the official property and things in the person's custody or possession pertaining to the office, within the person's knowledge, the person complained against shall be discharged and all further proceedings in the matter before the judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit the person complained against to the county jail, there to remain until the delivery of such property and things to the complainant or until the person complained against be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue a warrant, directed to the sheriff or any constable of the county, commanding the sheriff or constable in the daytime to search such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which the officer was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, the judge shall inquire whether the same pertain to such office, and if it thereupon appears that the property or things pertain thereto the judge shall order the delivery of the property or things to the complainant.

History: 1977 c. 449; 1991 a. 316; 1993 a. 213.

19.23 Transfer of records or materials to historical society. (1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.61.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 (1) offer title and transfer custody to the historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the historical society title to such court records as have been photographed or microphotographed or which have been on file for at least 75 years, and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

History: 1975 c. 41 s. 52; 1981 c. 350 s. 13; 1985 a. 180 s. 30m; 1987 a. 147 s. 25; 1991 a. 226; 1995 a. 27.

19.24 Refusal to deliver money, etc., to successor. Any public officer whatever, in this state, who shall, at the expiration of the officer's term of office, refuse or wilfully neglect to deliver, on demand, to the officer's successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers or other property belonging to the office and in the officer's hands or under the officer's control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than $100.

History: 1991 a. 316.

19.25 State officers may require searches, etc., without fees. The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the court of appeals, of the circuit courts, of the registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.

History: 1977 c. 187, 449.

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 employes 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 employes 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.

History: 1981 c. 335, 391.

An agency cannot promulgate an administrative rule which creates an exception to the open records law. Chavala v. Bubolz, 204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996).

The Wisconsin public records law. 67 MLR 65 (1983).

Municipal responsibility under the Wisconsin revised public records law. Maloney. WBB Jan. 1983.

The public records law and the Wisconsin department of revenue. Boykoff. WBB Dec. 1983.

The Wis. open records act: an update on issues. Trubek and Foley. WBB Aug. 1986.

Toward a More Open and Accountable Government: A Call For Optimal Disclosure Under the Wisconsin Open Records Law. Roang. 1994 WLR 719.

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; 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; a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3); 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.

(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).

(b) The Wisconsin resource center established under s. 46.056.

(c) A secure mental health unit or facility established under s. 980.065 (2).

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

(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, as defined in s. 880.01 (3), of an individual adjudged incompetent, as defined in s. 880.01 (4), 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" 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.

(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.

History: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a. 158; 1997 a. 79, 94.

Risk management study commissioned by corporation counsel was not a "draft" under sub. (2); evidence showed county paid for and used study in various ways. Fox v. Bock, 149 W (2d) 403, 438 NW (2d) 589 (1989).

A settlement agreement containing a pledge of confidentiality kept in the possession of a school district's attorney was a public record subject to public access. Journal/Sentinel v. Shorewood School Bd. 186 W (2d) 443, 521 NW (2d) 165 (Ct. App. 1994).

Individuals confined as sexually violent persons under ch. 980 are not "incarcerated" under sub. (1c). Klein v. Wisconsin Resource Center, 218 W (2d) 487, 582 NW (2d) 44 (Ct. App. 1998).

"Records" must have some relation to functions of agency. 72 Atty. Gen. 99.

Treatment of drafts under the public records law discussed. 77 Atty. Gen. 100.

Applying Open Records Policy to Wisconsin District Attorneys: Can Charging Guidelines Promote Public Awareness? Mayer. 1996 WLR 295.

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 employe 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 employe 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 employes 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.

History: 1981 c. 335.

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 con-

taining 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. 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.

History: 1981 c. 335.

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 of any state correctional institution, as defined in s. 301.01 (4), jail, as defined in s. 165.85 (2) (bg), secured correctional facility, as defined in s. 938.02 (15m), secured child caring institution, 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 the population or staff of any of these institutions, facilities or jails.

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.

(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) 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.

(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 employes 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.

(d) 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.

(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, 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) 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.

(6) 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.

History: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133.

Mandamus petition to inspect county hospital's statistical, administrative and other records not identifiable with individual patients, states cause of action under this section. State ex rel. Dalton v. Mundy, 80 W (2d) 190, 257 NW (2d) 877.

Police daily arrest list must be open for public inspection. Newspapers, Inc. v. Breier, 89 W (2d) 417, 279 NW (2d) 179 (1979).

Newspaper had right to intervene to protect right to examine sealed court file. Public official failed to qualify for exceptions to absolute disclosure rule of this section. State ex rel. Bilder v. Delavan Tp. 112 W (2d) 539, 334 NW (2d) 252 (1983).

Although meeting was properly closed, in order to refuse inspection of meeting records custodian was required by (1) (a) to state specific and sufficient public policy reasons why public interest in nondisclosure outweighed public's right of inspection. Oshkosh Northwestern Co. v. Oshkosh Library Bd. 125 W (2d) 480, 373 NW (2d) 459 (Ct. App. 1985).

Courts must apply open records balancing test to questions involving disclosure of court records. Under Hathaway test, party must show that public interests favoring secrecy outweigh those favoring disclosure. C. L. v. Edson, 140 W (2d) 168, 409 NW (2d) 417 (Ct. App. 1987).

Public records germane to pending litigation were available under this section even though discovery cutoff deadline had passed. State ex rel. Lank v. Rzentkowski, 141 W (2d) 846, 416 NW (2d) 635 (Ct. App. 1987).

In determining whether trial court properly upheld custodian's denial of access, appellate court will inquire whether trial court made a factual determination supported by record of whether documents implicate secrecy interest, and, if so, whether secrecy interest outweighs release interest. Milwaukee Journal v. Call, 153 W (2d) 313, 450 NW (2d) 515 (Ct. App. 1989).

That releasing records would reveal confidential informant's identity was legally specific reason for denial of records request; public interest in revealing informant's identity outweighed public interest in disclosure of records. Mayfair Chrysler–Plymouth v. Baldarotta, 162 W (2d) 142, 469 NW (2d) 638 (1991).

Recognized public policy interest in denying access to police personnel files overrides presumption that records should be released. Village of Butler v. Cohen, 163 W (2d) 819, 472 NW (2d) 579 (Ct. App. 1991).

Items subject to examination under 346.70 (4) (f) may not be withheld by prosecution under common law rule that investigative material may be withheld from criminal defendant. State ex rel. Young v. Shaw, 165 W (2d) 276, 477 NW (2d) 340 (Ct. App. 1991).

Prosecutor's files are exempt from public access under common law. State ex rel. Richards v. Foust, 165 W (2d) 429, 477 NW (2d) 608 (1991).

Records relating to pending claims against state under 893.82 need not be disclosed under 19.35; records of non–pending claims must be disclosed unless an in camera inspection reveals attorney client privilege would be violated. George v. Record Custodian, 169 W (2d) 573, 485 NW (2d) 460 (Ct. App. 1992).

Public records law confers no exemption as of right on indigents from payment of fees under (3). George v. Record Custodian, 169 W (2d) 573, 485 NW (2d) 460 (Ct. App. 1992).

Denial of prisoner's information request regarding illegal behavior by guards on the grounds that it could compromise the guards' effectiveness and subject them to harassment was insufficient. State ex. rel. Ledford v. Turcotte, 195 W (2d) 244, 536 NW (2d) 130 (Ct. App. 1995).

The amount of prepayment required for copies may be based on a reasonable estimate. State ex rel. Hill v. Zimmerman, 196 W (2d) 419, 538 NW (2d) 608 (Ct. App. 1995).

The *Foust* decision does not automatically exempt all records stored in a closed prosecutorial file. The exemption is limited to material actually pertaining to the prosecution. Nichols v. Bennett, 199 W (2d) 268, 544 NW (2d) 428 (1996).

There is no blanket exception under the open records law for public employe disciplinary or personnel records. There must be a balancing of interests on a case by case basis. Wisconsin Newspapers, Inc. v. School District of Sheboygan Falls, 199 W (2d) 769, 546 NW (2d) 143 (1996).

Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 W (2d) 442, 549 NW (2d) 452 (Ct. App. 1996).

Sub. (1) (i) and (3) (f) did not permit a demand for prepayment of $1.29 in response to a mail request for a record. Borzych v. Paluszcyk, 201 W (2d) 523, 549 NW (2d) 253 (Ct. App. 1996).

Personal records in the hands of an authority are not exempt from the open records law. The custodian of the records must consider all relevant factors, balancing public and private interests, in determining whether the records should be released. The individual whose personal interests are implicated by the potential release of the records may intervene and seek circuit court review of a decision to release the records. Woznicki v. Erickson, 202 W (2d) 178, 549 NW (2d) 699 (1996).

An agency cannot promulgate an administrative rule which creates an exception to the open records law. Chavala v. Bubolz, 204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996).

While certain statutes grant explicit exceptions to the open records law, many statutes set out broad categories of records not open to an open records request. A custodian faced with such a broad statute must state with specificity a public policy reason for refusing to release the requested record. Chavala v. Bubolz, 204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996).

The custodian is not authorized to comply with an open records request at some unspecified date in the future. Such a response constitutes a denial of the request. WTMJ, Inc. v. Sullivan, 204 W (2d) 452, 555 NW (2d) 125 (Ct. App. 1996).

Subject to the redaction of officers' home addresses and supervisors' conclusions and recommendations regarding discipline, police records regarding use of deadly force are subject to public inspection. State ex rel. Journal/Sentinel, Inc. v. Arreola, 207 W (2d) 496, 558 NW (2d) 670 (Ct. App. 1996).

A public school student's interim grades are pupil records specifically exempted from disclosure under s. 118.125. Where records are specifically exempted from disclosure, failure to specifically state reasons for denying an open records request for those records does not compel disclosure of those records. State ex rel. Blum v. Board of Education, 209 W (2d) 377, 565 NW (2d) 140 (Ct. App. 1997).

Requesting a copy of 180 hours of audiotape of "911" calls, together with a transcription of the tape and log of each transmission received, was a request without "reasonable limitation" and was not a "sufficient request" under sub. (1) (h). Schopper v. Gehring, 210 W (2d) 209, 565 NW (2d) 187 (Ct. App. 1997).

When access is sought to any records which pertain to an individual the targeted individual has a right to notification and to seek court review of the decision if the record custodian agrees to release the information. The test outlined in *Woznicki* applies to personnel records of public sector employes. Klein v. Wisconsin Resource Center, 218 W (2d) 487, 582 NW (2d) 44 (Ct. App. 1998).

Examination of birth records cannot be denied simply because the examiner has a commercial purpose. 58 Atty. Gen. 67.

Consideration of a resolution is formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of vote must be made available for public inspection absent specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Inspection of public records obtained under official pledges of confidentiality may be denied where a clear pledge has been made in order to obtain the information, where the pledge was necessary to obtain the information, and where the custodian determines that the harm to the public interest resulting from inspection would outweigh the public interest in full access to public records. Custodian must permit inspection of information submitted under an official pledge of confidentiality where the official or agency had specific statutory authority to require its submission. 60 Atty. Gen. 284.

The right to inspection and copying of public records in decentralized offices discussed. 61 Atty. Gen. 12.

Public records subject to inspection and copying by any person would include list of students awaiting particular program in a VTAE (technical college) district school. 61 Atty. Gen. 297.

The investment board can only deny members of the public from inspecting and copying portions of the minutes relating to the investment of state funds and documents pertaining thereto on a case–by–case basis where valid reasons for denial exist and are specially stated. 61 Atty. Gen. 361.

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record. 63 Atty. Gen. 143.

Scope of the duty of the governor to allow members of the public to examine and copy public records in his custody discussed. 63 Atty. Gen. 400.

Public's right to inspect land acquisition files of the department of natural resources discussed. 63 Atty. Gen. 573.

Financial statements filed in connection with applications for motor vehicle dealers' and motor vehicle salvage dealers' licenses are public records, subject to limitations. 66 Atty. Gen. 302.

Sheriff's radio log, intradepartmental documents kept by sheriff and blood test records of deceased automobile drivers in hands of sheriff are public records, subject to limitations. 67 Atty. Gen. 12.

Right to examine and copy computer–stored information discussed. 68 Atty. Gen. 231.

After transcript of court proceedings is filed with clerk of court, any person may examine or copy transcript. 68 Atty. Gen. 313.

Custodian may not require requester to pay cost of unrequested certification. Unless fee for copies of records is established by law, custodian may not charge more than actual and direct cost of reproduction. 72 Atty. Gen. 36.

Copying fee but not location fee may be imposed on requester for cost of computer run. 72 Atty. Gen. 68.

Fee for copying public records discussed. 72 Atty. Gen. 150.

Public records relating to employe grievances are not generally exempt from disclosure. Nondisclosure must be justified on case–by–case basis. 73 Atty. Gen. 20.

Disclosure of employe's birth date, sex, ethnic heritage and handicapped status discussed. 73 Atty. Gen. 26.

Department of regulation and licensing may refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation"; good faith disclosure of same will not expose custodian to liability for damages; prospective continuing requests for records are not contemplated by public records law. 73 Atty. Gen. 37.

Prosecutors' case files are exempt from disclosure. 74 Atty. Gen. 4.

Relationship between public records law and pledges of confidentiality in settlement agreements discussed. 74 Atty. Gen. 14.

See note to 146.50, citing 78 Atty. Gen. 71.

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. 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.

(7) 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, as defined in s. 19.42 (7w). "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.

(8) 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 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.

(9) 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.

History: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27.

Separation costs must be borne by agency. 72 Atty. Gen. 99.

Computerized compilation of bibliographic records discussed in relation to copyright law; requester is entitled to copy of computer tape or printout of information on tape. 75 Atty. Gen. 133 (1986).

Federal exemption was not incorporated under (1). 77 Atty. Gen. 20.

Sub. (7) is an exception to the public records law and should be narrowly construed. In sub. (7) "applicant" and "candidate" are synonymous. "Final candidates" are the five most qualified unless there are less than five applicants in which case all are final candidates. 81 Atty. Gen. 37.

Public access to law enforcement records. Fitzgerald. 68 MLR 705 (1985).

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.

History: 1991 a. 269 ss. 27d, 27e, 35am, 37am, 39am.

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).

(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.

(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 $100, 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). 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) 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 wilful 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 award punitive damages to the requester.

(4) 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.

History: 1981 c. 335, 391; 1991 a. 269 s. 43d; 1995 a. 158; 1997 a. 94.

Party seeking fees under sub. (2) must show that prosecution of action could reasonably be regarded as necessary to obtain information and that "causal nexus" exists between that action and agency's surrender of information. State ex rel. Vaughan v. Faust, 143 W (2d) 868, 422 NW (2d) 898 (Ct. App. 1988).

If agency exercises due diligence but is unable to respond timely to records request, plaintiff must show that mandamus action was necessary to secure records release to qualify for award of fees and costs under sub. (2). Racine Ed. Ass'n. v. Bd. of Ed., 145 W (2d) 518, 427 NW (2d) 414 (Ct. App. 1988).

Assuming sub. (1) (a) applies before mandamus is issued, trial court retains discretion to refuse counsel's participation in in camera inspection. Milwaukee Journal v. Call, 153 W (2d) 313, 450 NW (2d) 515 (Ct. App. 1989).

Where trial court has incomplete knowledge of contents of public records sought, it must conduct in camera inspection to determine what may be disclosed following custodian's refusal. State ex rel. Morke v. Donnelly, 155 W (2d) 521, 455 NW (2d) 893 (1990).

Pro se litigant not entitled to attorney's fees. State ex rel. Young v. Shaw, 165 W (2d) 276, 477 NW (2d) 340 (Ct. App. 1991).

A favorable judgment or order is not a necessary condition precedent to find that a party prevailed against an agency under sub. (2); a causal nexus must be shown between the prosecution of the mandamus action and the release of the requested information. Eau Claire Press Co. v. Gordon, 176 W (2d) 154, 499 NW (2d) 918 (Ct. App. 1993).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80 (1). Auchinleck v. Town of LaGrange, 200 W (2d) 585, 547 NW (2d) 587 (1996).

An inmate's right to mandamus under this section is subject to s. 801.02 (7) which requires exhaustion of administrative remedies before an action may be commenced. Moore v. Stabowiak, 212 W (2d) 744, 569 NW (2d) 711 (Ct. App. 1997).

Actual damages are liability of agency. Punitive damages and forfeitures can be liability of either agency or legal custodian or both. Section 895.46 (1) (a) probably provides indemnification for punitive damages assessed against custodian but not for forfeitures. 72 Atty. Gen. 99.

19.39 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

History: 1981 c. 335.

SUBCHAPTER III

CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYES

19.41 Declaration of policy. (1) It is declared that high moral and ethical standards among state public officials and state employes are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employes will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employes.

(2) It is the intent of the legislature that in its operations the board shall protect to the fullest extent possible the rights of individuals affected.

History: 1973 c. 90; Stats. 1973 s. 11.01; 1973 c. 334 s. 33; Stats. 1973 s. 19.41; 1977 c. 277.

19.42 Definitions. In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

(3) "Board" means the ethics board.

(4) "Candidate for state public office" means any individual who files nomination papers and a declaration of candidacy under s. 8.21 or who is nominated at a caucus under s. 8.05 (1) for the purpose of appearing on the ballot for election as a state public official or any individual who is nominated for the purpose of appearing on the ballot for election as a state public official through the write–in process or by appointment to fill a vacancy in nomination and who files a declaration of candidacy under s. 8.21.

(5) "Department" means the legislature, the university of Wisconsin system, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14 or 15, any technical college district or any constitutional office other than a judicial office. In the case of a district attorney, "department" means the department of administration unless the context otherwise requires.

(5m) "Elective office" means an office regularly filled by vote of the people.

(6) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7) "Immediate family" means:

(a) An individual's spouse; and

(b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one–half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one–half of his or her support.

(7m) "Income" has the meaning given under section 61 of the internal revenue code.

(7s) "Internal revenue code" has the meanings given under s. 71.01 (6).

(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

(b) A county administrator or administrative coordinator or a city or village manager.

(c) An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(cm) The position of member of the board of directors of a local exposition district under subch. II of ch. 229 not serving for a specified term.

(d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(7x) "Local public official" means an individual holding a local public office.

(8) "Ministerial action" means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own judgment as to the propriety of the action being taken.

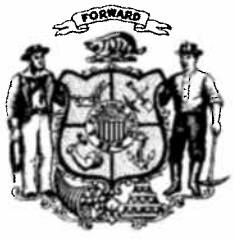
(9) "Nominee" means any individual who is nominated by the governor for appointment to a state public office and whose nomination requires the advice and consent of the senate.

(10) "Official required to file" means:

(a) A member of the elections board.

(b) A member of a technical college district board or district director of a technical college, or any individual occupying the position of assistant, associate or deputy district director of a technical college.

WISCONSIN STATE LEGISLATURE



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New chair training---Mark Patronsky---1/19/99

1) Planning committee work and scheduling meetings

a) Theme---Plan ahead

b) Committee meeting days

c) Subjects of hearings

d) Hearings on unintroduced bills

e) Considerations for scheduling hearings

i) Which bills and rules should have hearings

ii) Communication with authors of bills

iii) Fiscal estimates

f) Meeting notice for hearings and executive sessions

g) Out of town hearings

2) Public hearings

a) Theme---purpose of the public hearing

i) Members learn about the bills and rules

ii) Give the public a fair chance to participate

b) Starting on time

c) Chairperson's announcements and remarks

d) Running the hearing

i) Order of business

ii) Recommended order of testimony for bills

iii) Questions from committee members

iv) People who read written remarks

v) Questions from the audience

vi) Temporary absence of the chair

3) Executive sessions

a) Theme---This is when the real work of the committee is done

b) Need quorum for an executive session

c) Bills must be introduced and referred to the committee

d) Assume that a bill needs amendments

e) Most important policies

i) Don't hold an executive session on the same day as the hearing

ii) Only take up amendments that are distributed 24 hours ahead

iii) Reschedule the executive session if there are problems

f) Other issues for the executive session

i) Unanimous consent

ii) Tabling motions

iii) Voting in presence of committee

iv) Absent members


FORWARD
E PLURIBUS UNUM

Wisconsin State Assembly
P.O. BOX 8952 • MADISON, WI 53708

Assembly Committee on Government Operations Guidelines
1999-2000 Session
March 10, 1999

1. Possible Activities of Committee:
   - A. Review Proposed Legislation
   - B. Review Administrative Rules
   - C. Conduct Studies, Investigations and Reviews
   - D. Prepare Budget Recommendations

2. Hearings:
   - A. Hearings will follow procedures established in the "Manual on Committee Procedures and Powers," January 1999.
   - B. Efforts will be made to accommodate those who wish to testify but need to leave early.

3. Voting:
   - A. All motions must receive a second in order to be placed before the committee for a vote.
   - B. All committee votes must be taken on a roll call vote in the presence of the committee.
   - C. A member must be present in order to be recorded as voting. The voting roll may be held open until the adjournment of the executive session, in order to permit absent members to vote. However, absent members must return, and vote in the presence of the committee, in order for the vote to be recorded. If an absent member is unable to vote during the executive session upon timely request, the absent member may have the committee report show how the member would have voted if he or she had been present.
   - D. Every committee member who is present must vote.
   - E. Members vote in the order in which named to the committee.
   - F. A committee may reconsider any action taken on a proposal up until the time that the proposal is reported out to the Assembly.

4. Accommodating Committee Members:
   A. Chair will call members in advance to schedule times most convenient.
   B. Hold roll call & voting roll open to accommodate those running late.
   C. Sensitive to member's time, chair will attempt to keep meeting's focused and on course.

5. Records of Proceedings:
   A. Available in Room 9N, 9-5 PM Weekdays or by special arrangement to accommodate reviewers.

6. Possible Options:
   1. Hold hearings on topics & draft a committee bill.
   2. Hold hearings outside of Madison.
   3. Use electronic teleconferences if appropriate for members, or people who testify or concerned citizens groups.

Given time constraints and the nature of the legislative process, strict adherence to the above guidelines will not always be possible. I will make every effort to preside over the committee proceedings in a fair and consistent manner.

I am honored to serve as Chairperson of the Assembly Committee on Government Operations and look forward to working with you during the session.

Steve Wieckert, Chair
Assembly Committee on Government Operations


FORWARD

Becher, Scott

From: Dave Hager [dhager@uwc.edu]
Sent: Friday, October 08, 1999 6:45 PM
To: scott.becher@legis.state.wi.us
Subject: Video Conference Info

Scott, here is the information that I obtained from our Media Services Dept. It's written in the first person, since I copied it directly from the email that I obtained. The memo is from Tom Frantz, our campus director of media services.

I put it in bold face, for your convenience.

I am going to try to "attach" a memo from the UW Colleges System Administrator, Dick Cleek, re: the UW's policy on using video.

Attached in the current policy regarding chargebacks for use of the Compressed Video system. Dick Cleek made our policies conform to others in the System so there won't be interinstitutional price cutting. Now VTAE is another matter altogether.

If Steve wants to link various sites with 2 way audio & video in real time, compressed video is a cost-effective way now. He could originate here and we would tie into other sites via a bridge in Madison.

Should Steve be interested in a 1 way video and 2 way audio, another possibility would be to originate programs via cable TV and use phone lines for the return audio. The limit there would be the footprint of the receive sites would be limited to the cable plant service territory.

If Steve is interested in pursuing the interstate programs with full motion video, then a satellite uplink would be necessary. That would become

expensive because you'd have the satellite truck costs, the transponder time on the satellite, and the people costs to make it all work. The big advantage is that the signal would be capable of reaching many more sites than you could tie in with compressed video. Satellite would be 1 way video, and could be 2 way audio if done properly.

I guess to be of much more help, I'd need to talk to him or his representatives directly.

Let me know if I may be further assistance.