



2023 ASSEMBLY BILL 145

April 7, 2023 - Introduced by Representatives NOVAK, SWEARINGEN, ALLEN, ARMSTRONG, BALDEH, BEHNKE, BODDEN, BROOKS, EDMING, GUNDRUM, GUSTAFSON, KITCHENS, KNODL, MACCO, MURPHY, MURSAU, NEDWESKI, PENTERMAN, RETTINGER, RODRIGUEZ, SORTWELL, TITTL, TRANEL, TUSLER, WITTKER, STEFFEN and C. ANDERSON, cosponsored by Senators STROEBEL, BALLWEG, CABRAL-GUEVARA, COWLES, FELZKOWSKI, NASS, QUINN, ROYS, WANGGAARD and SPREITZER. Referred to Committee on Government Accountability and Oversight.

1 **AN ACT** *to renumber* 19.37 (2) (a); and *to create* 19.37 (2) (a) 2. of the statutes;
2 **relating to:** obtaining attorney fees and costs under the state’s public records
3 law when an authority voluntarily or unilaterally releases a contested record
4 after an action has been filed in court.

Analysis by the Legislative Reference Bureau

Currently, if a person requests access to a public record and the agency or officer in state or local government having custody of the record, known as an “authority” under the public records law, withholds or delays granting access to the record or a part of the record, the requester may bring a mandamus action asking a court to order release of the record or part of the record. Current law requires the court to 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 such action.

The Wisconsin Supreme Court decided in 2022 that a requester prevails in whole or in substantial part only if the requester obtains a judicially sanctioned change in the parties’ legal relationship, for example, a court order requiring disclosure of a record. See, *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57. Under the supreme court’s decision, a requester generally is not entitled to attorney fees and costs if the authority voluntarily or unilaterally without a court order provides contested records after the requester files an action in court.

