

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0070/1dn
JTK:kmg:jf

March 20, 2001

Representative Powers:

1. I think the restatement of the common law balancing test is best placed in s. 19.35 (1) (a), stats., in lieu of the current reference to the test contained in that paragraph. Proposed s. 19.356 has a more limited application to records containing personal information, whereas the balancing test pertains to all information that might be contained in a record, whether or not it contains personal information.
2. Concerning the presumption of access, this rule is currently codified in s. 19.31, stats. (the declaration of policy). I therefore did not include specific mention of it in this draft.
3. I have reworded slightly the exception in proposed s. 19.356 (2) (b) relating to access to records by record subjects and representatives. I believe it captures your intent.
4. The most difficult part of the draft is proposed s. 19.356 (2) (a), which describes the categories of information which, if contained in a record, trigger the required notice to the record subject before access may occur. I think it is important to recognize here that employees are a large group of people (probably 60% of Wisconsin's population) and nonemployees are also a large group (the remainder of the population). In this paragraph, I think we are concerned only with information arising as a result of an employment relationship, or in some cases a prospective or past employment relationship. We don't want to make distinctions in granting access to other information contained in records solely on the basis of whether the record subject happens to be an employee (which may not be apparent from the record). For example, if we are concerned with information pertaining to a murder, it would make no difference whether the alleged perpetrator happens to be an employee. With respect to employees of private employers, I think the primary potential impact is in proposed s. 19.356 (2) (a) 4., and possibly subd. 1. I think proposed s. 19.356 (2) (a) 2. and 5. (with the exception of social security numbers) would probably only relate to employees of the authority.
5. Proposed s. 19.356 (2) (a) 3., it seems, would relate equally to letters of reference pertaining to employees and prospective employees. Do you wish to cover letters relating to prospective employees?
6. Proposed s. 19.356 (2) (a) 2. in this draft potentially restricts access to the home addresses, telephone numbers, and social security numbers of employees. This draft

provides that this provision applies only to employees of the authority to whom an access request is made. The issue of social security numbers was not addressed in the original bill. This subject has been treated in a number of other pieces of proposed legislation. The subject is also treated extensively in federal law and state law, which require and forbid access to social security numbers under various circumstances. If this provision were to apply to all employees, there might not be a rational basis to treat employees and nonemployees differently in this regard. In addition, it might be impossible to administer because many records (for example, records filed with registers of deeds) do not indicate whether the record subject is an employee, and, even where the record does so indicate, there would be no way to determine whether the record subject was still an employee at the time that an access request is made. If you would like to broaden the treatment of this issue, please let me know.

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