

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB175)**

Received: 03/12/2001

Received By: kuesejt

Wanted: Soon

Identical to LRB:

For: Michael Powers (608) 266-1192

By/Representing: Dan Schmidt

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Addl. Drafters:

Subject: Public Record

Extra Copies: Dan Schmidt - LCS (e mail)

Submit via email: NO

Requester's email:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

ASA to AB-175

---

**Instructions:**

Per attached markup and insert.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 03/19/2001	gilfokm 03/20/2001		_____			
/1			jfrantze 03/20/2001	_____	lrb_docadmin 03/20/2001	lrb_docadmin 03/20/2001	
/2	kuesejt 03/28/2001	gilfokm 03/28/2001	pgreensl 03/29/2001	_____	lrb_docadmin 03/29/2001	lrb_docadmin 03/29/2001	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	kuesejt 03/30/2001	gilfokm 03/30/2001	jfrantze 04/02/2001	_____	lrb_docadmin 04/03/2001	lrb_docadmin 04/03/2001	

FE Sent For:

<END>

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB175)**

Received: 03/12/2001

Received By: kuesejt

Wanted: Soon

Identical to LRB:

For: Michael Powers (608) 266-1192

By/Representing: Dan Schmidt

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Addl. Drafters:

Subject: Public Record

Extra Copies: Dan Schmidt - LCS (e mail)

**Pre Topic:**

No specific pre topic given

**Topic:**

ASA to AB-175

**Instructions:**

Per attached markup and insert.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 03/19/2001	gilfokm 03/20/2001		_____			
/1			jfrantze 03/20/2001	_____	lrb_docadmin 03/20/2001	lrb_docadmin 03/20/2001	
/2	kuesejt 03/28/2001	gilfokm 03/28/2001	pgreensl 03/29/2001	_____	lrb_docadmin 03/29/2001	lrb_docadmin 03/29/2001	

13 kuesejt / 3-3/Kmg  
FE Sent For: 3/30 / 30-01

4/2

RS

2

<END>

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB175)**

Received: 03/12/2001

Received By: kuesejt

Wanted: Soon

Identical to LRB:

For: Michael Powers (608) 266-1192

By/Representing: Dan Schmidt

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Addl. Drafters:

Subject: Public Record

Extra Copies: Dan Schmidt - LCS (e mail)

**Pre Topic:**

No specific pre topic given

**Topic:**

ASA to AB-175

**Instructions:**

Per attached markup and insert.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	kuesejt 03/19/2001	gilfokm 03/20/2001		<u>3/29</u>			
1/12	kuesejt 3/28	1/2-3/ King 1/28-01	jfrantze 03/20/2001	<u>Pg/PF</u>	lrb_docadmin 03/20/2001	lrb_docadmin 03/20/2001	
FE Sent For:			<u>3/29</u> <u>Pg</u>	<END>			

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB175)**

Received: 03/12/2001

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Michael Powers (608) 266-1192**

By/Representing: **Dan Schmidt**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Public Record**

Extra Copies: **Dan Schmidt - LCS (e mail)**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

ASA to AB-175

---

**Instructions:**

Per attached markup and insert.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
12/1	kuesejt	3/19/11-8/26-01 King	[Signature] 3/20	[Signature] 3/20			

FE Sent For:

<END>

## 2001 ASSEMBLY BILL 175

March 7, 2001 - Introduced by Representatives POWERS, HAHN, LA FAVE, KREIBICH, TOWNSEND, SYKORA and REYNOLDS, cosponsored by Senator ERPENBACH. Referred to Committee on Personal Privacy.

1 AN ACT to amend 40.07 (1) (intro.), (2) and (3), 230.13 (1) (intro.) and 233.13  
2 (intro.); and to create 19.32 (1w) and (2g), 19.356 and 19.36 (10) of the statutes;  
3 relating to: access to public employee personnel records and certain other  
4 public records containing personally identifiable information.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, any requester has a right to inspect or copy any public record unless otherwise provided under statutory or common law or unless, under a "balancing test" derived from common law, the custodian demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing that access. See s. 19.35 (1), stats., and *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, 682-83 (1965) and *Hathaway v. Green Bay School District*, 116 Wis. 2d 388, 395-96 (1984). If a custodian fails to provide prompt access to a requested record or to make this demonstration, a requester may obtain a court order requiring a custodian to provide access to a record. See s. 19.37 (1), stats.

In *Woznicki v. Erickson*, 202 Wis.2d 178, 192-193 (1996), the Wisconsin supreme court held that a district attorney must notify any individual who is the subject of a record which the district attorney proposes to release to a requester prior to release, and that the individual may appeal a decision to release a record to circuit court, which must determine whether permitting access would result in harm to the privacy or reputational interests of the subject individual that outweigh the public interest in allowing access. In *Milwaukee Teachers Education Assn. v. Milwaukee Bd. of School Directors*, 227 Wis. 2d 779, 799 (1999), the supreme court expanded this

**ASSEMBLY BILL 175**

decision to apply to all public records. There is no statutory basis for these decisions. The decisions also depart from the supreme court's previous decisions, which held that, unless otherwise provided, custodians have no obligation to withhold public records from access and no person may require them to do so. See *Newspapers, Inc. v. Brier*, 89 Wis.2d 417, 431-32 (1979) and *State ex rel. Bilder v. Twp. of Delavan*, 112 Wis.2d 539, 558 (1983).

This bill affirms current statutory law by providing that, unless otherwise specifically provided by statute, no custodian of a public record is required to notify an individual who is the subject of a record prior to providing to a requester access to a record containing information pertaining to that individual and that, unless otherwise provided by statute, no person is entitled to judicial review of the decision of a custodian to provide a requester with access to a public record.

However, the bill also creates a statutory procedure under which individuals who are the subjects of certain public records may seek a court order to restrain state or local government officers or agencies from providing access to those records to third parties if the subject individuals can demonstrate that the harm to their privacy or reputational interests resulting from disclosure of the information contained in those records outweighs the public interest in providing access to those records. Under the bill, if the officer or agency having custody of a public record receives a request to provide access to a record containing personally identifiable information as the result of an investigation by the officer or agency into a disciplinary matter or possible violation of a statute, rule, regulation, or policy of the officer or agency, the officer or agency must, before providing access, provide written notice to each subject individual of the officer's or agency's intent to release the record. If a subject individual notifies the officer or agency, within 5 days, of his or her intent to seek a court order restraining release of the record and files an action seeking such an order within 10 days, the record may not be released unless the court so permits.

The bill also provides that no state or local governmental officer or agency may release certain personnel records and information in response to a request for inspection, except to a public employee or employee's representative to the extent required under current law or an applicable collective bargaining agreement. Affected records include personal medical records; records containing home addresses and telephone numbers, ~~unless an affected employee otherwise permits;~~ records relating to a possible criminal offense or possible misconduct connected with employment by a public employee prior to disposition of the investigation; letters of reference; records of employment examinations, except examination scores if not otherwise prohibited; and other records relating to staff management planning, performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, and comments relating to public employees. } Error

ASSEMBLY BILL 175

Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 19.32 (1w) and (2g) of the statutes are created to read:

2 19.32 (1w) "Public employee" means an individual who is employed by an  
3 authority, other than an individual holding an ~~elective office~~ <sup>state public office or local</sup>  
4 <sup>Public office</sup>  
5 <sup>as defined under s. 19</sup>

6 (2g) "Record subject" means an individual about whom personally identifiable  
7 information is contained in a record.

8 SECTION 2. 19.356 of the statutes is created to read:

9 19.356 Notice to record subject; right of action. (1) Except as authorized  
10 in this section or as otherwise provided by statute, no authority is required to notify  
11 a record subject prior to providing to a requester access to a record containing  
12 information pertaining to that record subject, and no person is entitled to judicial

13 review of the decision of an authority to provide a requester with access to a record.  
14 (2) <sup>(2) -> Prior to the release of any public record, an authority must determine</sup>  
15 ~~(2) If an authority decides to permit access to a record created or maintained~~ <sup>cover</sup>

16 ~~by the authority under s. 19.35 (1) as a result of the authority's investigation into a~~  
17 ~~disciplinary matter or possible violation of a statute, rule, regulation, or policy of the~~ <sup>relating to a public employee Ordinance</sup>  
18 ~~authority, the authority shall, before permitting access and within 72 hours after~~  
19 ~~making the decision to permit access, serve written notice of that decision on any~~

20 ~~record subject to whom that record pertains, either by registered mail with return~~ <sup>certified</sup>  
~~receipt signed by the addressee or by personally serving the notice on the subject.~~

The notice shall briefly describe the requested record and include a description of the  
rights of the record subject under subs. (3) and (4).

Inv. A

Handwritten initials/signature



whether permitting inspection of the requested record would result in a harm to the public interest which outweighs the public interest in allowing inspection. If an authority determines that the release of a record would result in harm to the public interest which is greater than the <sup>Public's</sup> interest in allowing inspection, the authority may deny a request to release ~~that~~ a record.

(3) Notwithstanding s. 19.356 (4) and s. 19.36 (10), public records <sup>in the custody of an authority</sup> shall ~~are~~ generally be construed as open to inspection unless an authority can demonstrate the interest, in denying disclosure, in denying disclosure.

19.356(2)

disclosure

in denying disclosure

## ASSEMBLY BILL 175

## SECTION 2

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

4 ~~7 4~~ (4) Within 10 days after receipt of a notice under sub. (2), any record subject  
5 may commence an action seeking a court order to restrain the authority from  
6 providing access to the requested record. If a record subject commences such an  
7 action, the record subject shall name the authority as a defendant. The record  
8 subject shall also join the requester as a party to the action under s. 803.03.

9 ~~8 7~~ (5) An authority shall not provide access to a requested record within 12 days  
10 of sending a notice pertaining to that record under sub. (2). In addition, if the record  
11 subject commences an action under sub. (4), the authority shall not provide access  
12 to the requested record during pendency of the action. If the record subject appeals  
13 or petitions for review of a decision of the court or the time for appeal or petition for  
14 review of a decision adverse to the record subject has not expired, the authority shall  
15 not provide access to the requested record until any appeal is decided, until the  
16 period for appealing or petitioning for review expires, until a petition for review is  
17 denied, or until the authority receives written notice from the record subject that an  
18 appeal or petition for review will not be filed, whichever occurs first.

19 ~~9 8~~ (6) If the record subject demonstrates that the harm to his or her privacy or  
20 reputational interests caused by disclosure of the information contained in the  
21 requested record outweighs the public interest in disclosure of that information, the  
22 court shall restrain the authority from providing access to that record under s. 19.35  
23 (1).

24 ~~10 9~~ (7) The court shall not grant any request by a requester to delay the  
25 proceedings. The court shall issue a decision within 10 days after the filing of the

## ASSEMBLY BILL 175

1 summons and complaint and proof of service of the summons and complaint upon the  
2 defendant and the requester, unless a party demonstrates cause for extension of this  
3 period. In any event, the court shall issue a decision within 30 days after those filings  
4 are complete.

5 <sup>12</sup> ~~(8)~~ (9) If a party appeals a decision of the court under sub. (7), the court of appeals  
6 shall grant precedence to the appeal over all other matters not accorded similar  
7 precedence by law.

8 ~~SECTION 3. 19.36 (10) of the statutes is created to read:~~

9 ~~19.36 (10) PUBLIC EMPLOYEE PERSONNEL RECORDS. Unless access is specifically~~  
10 ~~authorized or required by statute, an authority shall not provide access to the~~

11 ~~following records under s. 19.35 (1), except to a public employee or the employee's~~

12 ~~representative to the extent required under s. 103.13 or a collective bargaining~~

13 ~~agreement under subch. IV of ch. 111.~~

14 ~~(a) Personal medical records of a public employee.~~

15 ~~(b) Records containing the home address or telephone number of a public~~

16 ~~employee, if the employee requests the authority to do so.~~

17 ~~(c) Records relating to the investigation of a possible criminal offense or possible~~

18 ~~misconduct connected with employment by a public employee prior to disposition of~~

19 ~~the investigation.~~

20 ~~(d) Letters of reference pertaining to a public employee.~~

21 ~~(e) Any record pertaining to an employment examination, except an~~

22 ~~examination score if access to that score is not otherwise prohibited.~~

23 ~~(f) Records of any material used by an authority for staff management planning,~~

24 ~~including performance evaluations, judgments or recommendations concerning~~

25 ~~future salary adjustments or other wage treatments, management bonus plans,~~

ASSEMBLY BILL 175

SECTION 3

1 ~~promotions, job assignments, or other comments or ratings relating to public~~  
2 ~~employees.~~

3 SECTION 4. 40.07 (1) (intro.), (2) and (3) of the statutes are amended to read:

4 40.07 (1) (intro.) Notwithstanding any other statutory provision, individual  
5 personal information in the records of the department is not ~~a public record and shall~~  
6 ~~not be disclosed, unless subject to access under s. 19.35 (1), but access to that~~  
7 information may be provided, unless prohibited under s. 19.36 (10), if:

8 (2) Notwithstanding sub. (1), information contained in medical records may be  
9 disclosed only when permitted under s. 19.36 (10) and only when a disability  
10 application denial is appealed or under a court order duly obtained upon a showing  
11 to the court that the information is relevant to a pending court action, but medical  
12 information gathered for any one of the benefit plans established under this chapter  
13 may be used by any other benefit plan established under this chapter.

14 (3) The department shall not furnish lists of participants, annuitants or  
15 beneficiaries to any person or organization except as permitted under s. 19.36 (10)  
16 and as required for the proper administration of the department.

17 SECTION 5. 230.13 (1) (intro.) of the statutes is amended to read:

18 230.13 (1) (intro.) Except as provided in sub. (3) and s. ss. 19.36 (10) and 103.13,  
19 the secretary and the administrator may keep records of the following personnel  
20 matters closed to the public:

21 SECTION 6. 233.13 (intro.) of the statutes is amended to read:

22 **233.13 Closed records.** (intro.) Except as provided in s. ss. 19.36 (10) and  
23 103.13, the authority may keep records of the following personnel matters closed to  
24 the public:

25 (END)

No  
longer  
need  
Jeff?

## Insert A

- (4) If an authority decides to permit access to any of the following records, the authority shall, before permitting access and within 72 hours after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains either by certified mail with return receipt signed by the addressee or by personally serving the notice on the subject:
- a. Records created or maintained by the authority under s. 19.35 (1) as a result of the authority's investigation into a disciplinary matter relating to a public or private employee or a possible violation of a statute, rule, regulation, ordinance or policy of the authority which relates to a public or private employee.
  - b. Records containing the home address or telephone number or Social Security number of a public or private employee, if the employee expressly requests that the authority not provide access to such records.
  - c. Letters of reference pertaining to a public or private employee.
  - d. Individual public or private employee personnel records used by an authority for staff management planning or employee evaluation, including employee performance evaluations, judgments or recommendations concerning future salary adjustments or other employee wage treatments, management employee bonus plans, promotions, job assignments, letters of reference or other comments or ratings relating to individual public or private employees.
  - e. Records pertaining to an individual public or private employee's employment examination, except an examination score if access to that score is not otherwise prohibited.
- (5) The notice required under s. 19.356 (4) shall briefly describe the requested record and include a description of the rights of the record subject under this section.
- (11) (10) Unless otherwise provided by law, this section does not apply to an authority who is providing a record to a public or private employee who is the subject of a record or to that employee's representative or a collective bargaining representative to the extent required under s. 103.13 or to fulfill an employer's duty to bargain or to the extent required under a collective bargaining agreement established under ch. 111.

WANTED TUE 2/20 - 1 PM

2001 - 2002 LEGISLATURE

LRB 14771

JTK:kmg:jf

50070/1

D No 75

ASSEMBLY SUB AMDT -

To

2001 ASSEMBLY BILL 175

March 7, 2001 - Introduced by Representatives POWERS, HAHN, LA FAVE, KREIBICH, TOWNSEND, SYKORA and REYNOLDS, cosponsored by Senator ERPENBACH. Referred to Committee on Personal Privacy.

(regenerate)

1 AN ACT to amend 40.07 (1) (intro.), (2) and (3), 230.13 (1) (intro.) and 233.13  
2 (intro.); and to create 19.32 (1w) and (2g), 19.356 and 19.36 (10) of the statutes;  
3 relating to: access to public employee personnel records and certain other  
4 public records containing personally identifiable information.

**Analysis by the Legislative Reference Bureau**

Under current law, any requester has a right to inspect or copy any public record unless otherwise provided under statutory or common law or unless, under a "balancing test" derived from common law, the custodian demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing that access. See s. 19.35 (1), stats., and *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, 682-83 (1965) and *Hathaway v. Green Bay School District*, 116 Wis. 2d 388, 395-96 (1984). If a custodian fails to provide prompt access to a requested record or to make this demonstration, a requester may obtain a court order requiring a custodian to provide access to a record. See s. 19.37 (1), stats.

In *Woznicki v. Erickson*, 202 Wis.2d 178, 192-193 (1996), the Wisconsin supreme court held that a district attorney must notify any individual who is the subject of a record which the district attorney proposes to release to a requester prior to release, and that the individual may appeal a decision to release a record to circuit court, which must determine whether permitting access would result in harm to the privacy or reputational interests of the subject individual that outweigh the public interest in allowing access. In *Milwaukee Teachers Education Assn. v. Milwaukee Bd. of School Directors*, 227 Wis. 2d 779, 799 (1999), the supreme court expanded this

**ASSEMBLY BILL 175**

decision to apply to all public records. There is no statutory basis for these decisions. The decisions also depart from the supreme court's previous decisions, which held that, unless otherwise provided, custodians have no obligation to withhold public records from access and no person may require them to do so. See *Newspapers, Inc. v. Brier*, 89 Wis.2d 417, 431-32 (1979) and *State ex rel. Bilder v. Twp. of Delavan*, 112 Wis.2d 539, 558 (1983).

This bill affirms current statutory law by providing that, unless otherwise specifically provided by statute, no custodian of a public record is required to notify an individual who is the subject of a record prior to providing to a requester access to a record containing information pertaining to that individual and that, unless otherwise provided by statute, no person is entitled to judicial review of the decision of a custodian to provide a requester with access to a public record.

However, the bill also creates a statutory procedure under which individuals who are the subjects of certain public records may seek a court order to restrain state or local government officers or agencies from providing access to those records to third parties if the subject individuals can demonstrate that the harm to their privacy or reputational interests resulting from disclosure of the information contained in those records outweighs the public interest in providing access to those records. Under the bill, if the officer or agency having custody of a public record receives a request to provide access to a record containing personally identifiable information as the result of an investigation by the officer or agency into a disciplinary matter or possible violation of a statute, rule, regulation, or policy of the officer or agency, the officer or agency must, before providing access, provide written notice to each subject individual of the officer's or agency's intent to release the record. If a subject individual notifies the officer or agency, within 5 days, of his or her intent to seek a court order restraining release of the record and files an action seeking such an order within 10 days, the record may not be released unless the court so permits.

The bill also provides that no state or local governmental officer or agency may release certain personnel records and information in response to a request for inspection, except to a public employee or employee's representative to the extent required under current law or an applicable collective bargaining agreement. Affected records include personal medical records; records containing home addresses and telephone numbers, unless an affected employee otherwise permits; records relating to a possible criminal offense or possible misconduct connected with employment by a public employee prior to disposition of the investigation; letters of reference; records of employment examinations, except examination scores if not otherwise prohibited; and other records relating to staff management planning, performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, and comments relating to public employees.

**ASSEMBLY BILL 175**

Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

bg

1 SECTION 1. 19.32 (1b) and (2g) of the statutes are created to read:

2 19.32 (1b) <sup>bg</sup> "Public employee" means an individual who is employed by an  
3 authority, other than an individual holding ~~an elective office~~ *a local public office or a state public office, as defined in s. 19.42,*

4 (2g) "Record subject" means an individual about whom personally identifiable  
5 information is contained in a record.

✓  
FWS  
3-5

6 SECTION 2. 19.356 of the statutes is created to read:

7 19.356 Notice to record subject; right of action. (1) Except as authorized  
8 in this section or as otherwise provided by statute, no authority is required to notify  
9 a record subject prior to providing to a requester access to a record containing  
10 information pertaining to that record subject, and no person is entitled to judicial  
11 review of the decision of an authority to provide a requester with access to a record.

or  
any  
individual  
who is  
employed  
by ~~an~~ an  
employer  
other  
than  
an  
authority

✓  
FWS  
3-11

12 ~~(2) If an authority decides to permit access to a record created or maintained~~  
13 ~~by the authority under s. 19.35 (1) as a result of the authority's investigation into a~~  
14 ~~disciplinary matter or possible violation of a statute, rule, regulation, or policy of the~~  
15 ~~authority, the authority shall, before permitting access and within 72 hours after~~  
16 ~~making the decision to permit access, serve written notice of that decision on any~~  
17 ~~record subject to whom that record pertains, either by registered mail with return~~  
18 ~~receipt signed by the addressee or by personally serving the notice on the subject.~~

19 (3) The notice <sup>under sub. (2) (a) ✓</sup> shall briefly describe the requested record and include a description of the  
20 rights of the record subject under <sup>this section</sup> ~~subs. (2) and (4)~~



## ASSEMBLY BILL 175

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

4       ~~(5)~~<sup>(a)</sup> Within 10 days after receipt of a notice under sub. (2), any record subject  
5 may commence an action seeking a court order to restrain the authority from  
6 providing access to the requested record. If a record subject commences such an  
7 action, the record subject shall name the authority as a defendant. The record  
8 subject shall also join the requester as a party to the action under s. 803.03.

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

19       ~~(7)~~<sup>(a)</sup> If the record subject demonstrates that the harm to his or her privacy or  
20 reputational interests caused by disclosure of the information contained in the  
21 requested record outweighs the public interest in disclosure of that information, the  
22 court shall restrain the authority from providing access to that record under s. 19.35  
23 (1).

24       ~~(8)~~<sup>(a)</sup> The court shall not grant any request by a requester to delay the  
25 proceedings. The court shall issue a decision within 10 days after the filing of the

## ASSEMBLY BILL 175

1 summons and complaint and proof of service of the summons and complaint upon the  
2 defendant and the requester, unless a party demonstrates cause for extension of this  
3 period. In any event, the court shall issue a decision within 30 days after those filings  
4 are complete.

5 ~~(9)~~<sup>(8)</sup> If a party appeals a decision of the court under sub. ~~(9)~~<sup>(8)</sup>, the court of appeals  
6 shall grant precedence to the appeal over all other matters not accorded similar  
7 precedence by law.

8 ~~SECTION 3. 19.36 (10) of the statutes is created to read:~~

9 ~~19.36 (10) PUBLIC EMPLOYEE PERSONNEL RECORDS. Unless access is specifically~~  
10 ~~authorized or required by statute, an authority shall not provide access to the~~  
11 ~~following records under s. 19.35 (1), except to a public employee or the employee's~~  
12 ~~representative to the extent required under s. 103.13 or a collective bargaining~~  
13 ~~agreement under subch. IV of ch. 111:~~

14 ~~(a) Personal medical records of a public employee.~~

15 ~~(b) Records containing the home address or telephone number of a public~~  
16 ~~employee, if the employee requests the authority to do so.~~

17 ~~(c) Records relating to the investigation of a possible criminal offense or possible~~  
18 ~~misconduct connected with employment by a public employee prior to disposition of~~  
19 ~~the investigation.~~

20 ~~(d) Letters of reference pertaining to a public employee.~~

21 ~~(e) Any record pertaining to an employment examination, except an~~  
22 ~~examination score if access to that score is not otherwise prohibited.~~

23 ~~(f) Records of any material used by an authority for staff management planning,~~  
24 ~~including performance evaluations, judgments or recommendations concerning~~  
25 ~~future salary adjustments or other wage treatments, management bonus plans,~~

ASSEMBLY BILL 175

1 promotions, job assignments, or other comments or ratings relating to public  
2 employees.

3 SECTION 4. 40.07 (1) (intro.) ~~and~~ and (3) of the statutes are amended to read:

4 40.07 (1) (intro.) Notwithstanding any other statutory provision, individual  
5 personal information in the records of the department is not ~~a public record and shall~~  
6 ~~not be disclosed, unless subject to access under s. 19.35 (1), but access to that~~  
7 ~~information may be provided, unless prohibited under s. 19.36 (10), if:~~  
*otherwise ordered under s. 19.35(7) ✓*

8 ~~(2) Notwithstanding sub. (1), information contained in medical records may be~~  
9 ~~disclosed only when permitted under s. 19.36 (10) and only when a disability~~  
10 ~~application denial is appealed or under a court order duly obtained upon a showing~~  
11 ~~to the court that the information is relevant to a pending court action, but medical~~  
12 ~~information gathered for any one of the benefit plans established under this chapter~~  
13 ~~may be used by any other benefit plan established under this chapter.~~

14 (3) The department shall not furnish lists of participants, annuitants or  
15 beneficiaries to any person or organization except ~~as permitted under s. 19.36 (10)~~  
16 ~~and~~ *✓ unless otherwise* as required for the proper administration of the department. *ordered under*

17 SECTION 5. ~~230.13 (1) (intro.) of the statutes is amended to read:~~ *s. 19.35(7) ✓*

18 230.13 (1) (intro.) Except as provided in sub. (3) and s. ~~ss. 19.36 (10) and 103.13,~~  
19 the secretary and the administrator may keep records of the following personnel  
20 matters closed to the public:

21 SECTION 6. 233.13 (intro.) of the statutes is amended to read:

22 233.13 Closed records. (intro.) Except as provided in s. ~~ss. 19.36 (10) and~~  
23 103.13, the authority may keep records of the following personnel matters closed to  
24 the public:

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0070/lins  
JTK.....

INSERT 3-5: ✓

SECTION 1. 19.35 (1) (a) of the statutes is amended to read:

19.35 (1) (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.~~ <sup>g</sup> Unless otherwise required by law, before permitting inspection of a record, an authority having custody of the record shall determine whether the harm to the public interest in withholding access to the information contained in the record outweighs the public interest in permitting access to that information. Unless otherwise required by law or unless otherwise ordered by a court under s. 19.356 (7), if the authority can demonstrate that the harm to the public interest in permitting inspection of the information contained in the record outweighs the public interest in permitting access to that information, the authority may withhold access to the information contained in the record. <sup>plain</sup> 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 under this paragraph 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.

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; 1999 a. 9.

INSERT 3-11: ✓

(2) (a) Except as provided in par. (b) and except as otherwise required by law, an authority shall, before permitting access and within 72 hours after making a

decision to permit access to a record, notify any record subject to whom the record pertains, either by certified mail with return receipt signed by the addressee or by personally serving the notice on the record subject if the record contains:

1. Information concerning the authority's investigation into a disciplinary matter relating to an employee or a possible violation by an employee of a policy of the employee's employer, ✓ or of a statute, rule, regulation, ✓ or ordinance ✓ or in connection with the employee's employment.

2. Information concerning the home address or telephone number, or the social security account number, of an employee of the authority, if the employee expressly requests that the authority not provide access to that information.

3. A letter of reference pertaining to an employee of the authority.

4. Information relating to one or more employees that is used by the authority or by the employer of the employees for staff management planning or employee evaluation, including employee performance evaluations, judgements <sup>AK</sup> or recommendations concerning future salary adjustments or other employee wage treatments, management employee bonus plans, promotions, job assignments, letters of reference, ✓ or other comments or ratings relating to individual employees.

5. Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.

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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0070/1dn

JTK.....

King

revised

**Representative Powers:**

1. I think the restatement of the common law balancing test is best placed in s. 19.35 (1) (a), <sup>in</sup>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, triggers 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 non-employees 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, 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.   
subd.

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. of 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 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 non-employees 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 an access request is made. If you would like to broaden the treatment of this issue, please let me know.

*what*  
Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**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.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

## **Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Wednesday, March 21, 2001 11:37 AM  
**To:** Rep.Powers  
**Subject:** LRB 01s0070/1 (Requested By Vince)

### ***Mike Barman***

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

**ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2001 ASSEMBLY BILL 175**

1     **AN ACT** to amend 19.35 (1) (a) and 40.07 (1) (intro.) and (3); and to create 19.32  
2           (1bg) and (2g) and 19.356 of the statutes; relating to: access to public employee  
3           personnel records and certain other public records containing personally  
4           identifiable information.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

5           **SECTION 1.** 19.32 (1bg) and (2g) of the statutes are created to read:

6           19.32 (1bg) "Employee" means an individual who is employed by an authority,  
7           other than an individual holding a local public office or a state public office, as defined  
8           in s. 19.42, or any individual who is employed by an employer other than an  
9           authority.

10          (2g) "Record subject" means an individual about whom personally identifiable  
11          information is contained in a record.

12          **SECTION 2.** 19.35 (1) (a) of the statutes is amended to read:

1 19.35 (1) (a) Except as otherwise provided by law, any requester has a right to  
2 inspect any record. ~~Substantive common law principles construing the right to~~  
3 ~~inspect, copy or receive copies of records shall remain in effect~~ Unless otherwise  
4 required by law, before permitting inspection of a record, an authority having  
5 custody of the record shall determine whether the harm to the public interest in  
6 withholding access to the information contained in the record outweighs the public  
7 interest in permitting access to that information. Unless otherwise required by law  
8 or unless otherwise ordered by a court under s. 19.356 (7), if the authority can  
9 demonstrate that the harm to the public interest in permitting inspection of the  
10 information contained in the record outweighs the public interest in permitting  
11 access to that information, the authority may withhold access to the information  
12 contained in the record. The exemptions to the requirement of a governmental body  
13 to meet in open session under s. 19.85 are indicative of public policy, but may be used  
14 as grounds for denying public access to a record under this paragraph only if the  
15 authority or legal custodian under s. 19.33 makes a specific demonstration that there  
16 is a need to restrict public access at the time that the request to inspect or copy the  
17 record is made.

18 **SECTION 3.** 19.356 of the statutes is created to read:

19 **19.356 Notice to record subject; right of action.** (1) Except as authorized  
20 in this section or as otherwise provided by statute, no authority is required to notify  
21 a record subject prior to providing to a requester access to a record containing  
22 information pertaining to that record subject, and no person is entitled to judicial  
23 review of the decision of an authority to provide a requester with access to a record.

24 (2) (a) Except as provided in par. (b) and except as otherwise required by law,  
25 an authority shall, before permitting access and within 72 hours after making a

1 decision to permit access to a record, notify any record subject to whom the record  
2 pertains, either by certified mail with return receipt signed by the addressee or by  
3 personally serving the notice on the record subject, if the record contains *any of the following*

4 1. Information concerning the authority's investigation into a disciplinary  
5 matter relating to an employee or a possible violation by an employee of a policy of  
6 the employee's employer, or of a statute, rule, regulation, or ordinance or in  
7 connection with the employee's employment.

8 2. Information concerning the home address or telephone number, or the social  
9 security account number, of an employee of the authority, if the employee expressly  
10 requests that the authority not provide access to that information.

11 ~~3. A letter of reference pertaining to an employee of the authority.~~ (see below.)

12 3 ~~4~~ Information relating to one or more employees that is used by the authority  
13 or by the employer of the employees for staff management planning or employee  
14 evaluation, including employee performance evaluations, judgments or  
15 recommendations concerning future salary adjustments or other employee wage  
16 treatments, management employee bonus plans, promotions, job assignments,  
17 letters of reference, or other comments or ratings relating to individual employees.

18 4 ~~5~~ Information pertaining to an employee's employment examination, except  
19 an examination score if access to that score is not otherwise prohibited.

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

*Apply only to employees records of an employee*

1           (3) The notice under sub. (2) (a) shall briefly describe the requested record and  
2 include a description of the rights of the record subject under this section.

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

6           (5) Within 10 days after receipt of a notice under sub. (2) (a), any record subject  
7 may commence an action seeking a court order to restrain the authority from  
8 providing access to the requested record. If a record subject commences such an  
9 action, the record subject shall name the authority as a defendant. The record  
10 subject shall also join the requester as a party to the action under s. 803.03.

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

21           (7) If the record subject demonstrates that the harm to his or her privacy or  
22 reputational interests caused by disclosure of the information contained in the  
23 requested record outweighs the public interest in disclosure of that information, the  
24 court shall restrain the authority from providing access to that record under s. 19.35  
25 (1).

1           (8) The court shall not grant any request by a requester to delay the  
2 proceedings. The court shall issue a decision within 10 days after the filing of the  
3 summons and complaint and proof of service of the summons and complaint upon the  
4 defendant and the requester, unless a party demonstrates cause for extension of this  
5 period. In any event, the court shall issue a decision within 30 days after those filings  
6 are complete.

7           (9) If a party appeals a decision of the court under sub. (8), the court of appeals  
8 shall grant precedence to the appeal over all other matters not accorded similar  
9 precedence by law.

10          **SECTION 4.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

11           40.07 (1) (intro.) Notwithstanding any other statutory provision, individual  
12 personal information in the records of the department is not ~~a public record and shall~~  
13 ~~not be disclosed, unless~~ subject to access under s. 19.35 (1), but access to that  
14 information may be provided, unless otherwise ordered under s. 19.356 (7), if:

15           (3) The department shall not furnish lists of participants, annuitants or  
16 beneficiaries to any person or organization except as required for the proper  
17 administration of the department unless otherwise ordered under s. 19.356 (7).

18

(END)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs00707 2  
JTK:kmg:jf

*Wanted Fri 3/30 - 9 AM*

**ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 175**

*(regenerate)*  
1 **AN ACT** ~~to amend 19.35 (1) (a) and 40.07 (1) (intro.) and (3); and to create 19.32~~  
2 ~~(1bg) and (2g) and 19.356~~ of the statutes; **relating to:** access to public employee  
3 personnel records and certain other public records containing personally  
4 identifiable information.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

5 **SECTION 1.** 19.32 (1bg) and (2g) of the statutes are created to read:

6 19.32 (1bg) "Employee" means an individual who is employed by an authority,  
7 other than an individual holding a local public office or a state public office, as defined  
8 in s. 19.42, or any individual who is employed by an employer other than an  
9 authority.

10 (2g) "Record subject" means an individual about whom personally identifiable  
11 information is contained in a record.

12 ~~**SECTION 2.** 19.35 (1) (a) of the statutes is amended to read:~~



1 19.35 (1) (a) Except as otherwise provided by law, any requester has a right to  
2 inspect any record. ~~Substantive common law principles construing the right to~~  
3 ~~inspect, copy or receive copies of records shall remain in effect~~ Unless otherwise  
4 required by law, before permitting inspection of a record, an authority having  
5 custody of the record shall determine whether the harm to the public interest in  
6 withholding access to the information contained in the record outweighs the public  
7 interest in permitting access to that information. Unless otherwise required by law  
8 or unless otherwise ordered by a court under s. 19.356 (7), if the authority can  
9 demonstrate that the harm to the public interest in permitting inspection of the  
10 information contained in the record outweighs the public interest in permitting  
11 access to that information, the authority may withhold access to the information  
12 contained in the record. The exemptions to the requirement of a governmental body  
13 to meet in open session under s. 19.85 are indicative of public policy, but may be used  
14 as grounds for denying public access to a record under this paragraph only if the  
15 authority or legal custodian under s. 19.33 makes a specific demonstration that there  
16 is a need to restrict public access at the time that the request to inspect or copy the  
17 record is made.

18 **SECTION 3.** 19.356 of the statutes is created to read:

19 **19.356 Notice to record subject; right of action.** (1) Except as authorized  
20 in this section or as otherwise provided by statute, no authority is required to notify  
21 a record subject prior to providing to a requester access to a record containing  
22 information pertaining to that record subject, and no person is entitled to judicial  
23 review of the decision of an authority to provide a requester with access to a record.

24 (2) (a) Except as provided in par. (b) and except as otherwise required by law,  
25 an authority shall, before permitting access and within 72 hours after making a

1 decision to permit access to a record, notify any record subject to whom the record  
2 pertains, either by certified mail with return receipt signed by the addressee or by  
3 personally serving the notice on the record subject, if the record contains:

*any of the following*

4 1. Information concerning the authority's investigation into a disciplinary  
5 matter relating to an employee or a possible violation by an employee of a policy of  
6 the employee's employer, or of a statute, rule, regulation, or ordinance or in  
7 connection with the employee's employment.

*prepared or provided by an employer*

8 2. Information concerning the home address or telephone number, or the social  
9 security account number, of an employee of the authority, if the employee expressly  
10 requests that the authority not provide access to that information.

*or any information that employer provides*

~~11 3. A letter of reference pertaining to an employee of the authority.~~

12 3. Information relating to one or more employees that is used by the authority  
13 or by the employer of the employees for staff management planning or employee  
14 evaluation, including employee performance evaluations, judgments or  
15 recommendations concerning future salary adjustments or other employee wage  
16 treatments, management employee bonus plans, promotions, job assignments,  
17 letters of reference, or other comments or ratings relating to individual employees.

18 4. Information pertaining to an employee's employment examination, except  
19 an examination score if access to that score is not otherwise prohibited.

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

1           **(3)** The notice under sub. (2) (a) shall briefly describe the requested record and  
2 include a description of the rights of the record subject under this section.

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

6           **(5)** Within 10 days after receipt of a notice under sub. (2) (a), any record subject  
7 may commence an action seeking a court order to restrain the authority from  
8 providing access to the requested record. If a record subject commences such an  
9 action, the record subject shall name the authority as a defendant. The record  
10 subject shall also join the requester as a party to the action under s. 803.03.

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

21           **(7)** If the record subject demonstrates that the harm to his or her privacy or  
22 reputational interests caused by disclosure of the information contained in the  
23 requested record outweighs the public interest in disclosure of that information, the  
24 court shall restrain the authority from providing access to that record under s. 19.35

25           **(1).**

1 (8) The court shall not grant any request by a requester to delay the  
 2 proceedings. The court shall issue a decision within 10 days after the filing of the  
 3 summons and complaint and proof of service of the summons and complaint upon the  
 4 defendant and the requester, unless a party demonstrates cause for extension of this  
 5 period. In any event, the court shall issue a decision within 30 days after those filings  
 6 are complete.

7 (9) If a party appeals a decision of the court under sub. (8), the court of appeals  
 8 shall grant precedence to the appeal over all other matters not accorded similar  
 9 precedence by law.

*file component*

10 SECTION 4. 40.07 (1) <sup>(4)</sup> ~~(1) (intro.) and (3)~~ of the statutes <sup>is created</sup> are amended to read:  
 11 <sup>(3) (14)</sup> Section 19.356 does not apply to any  
 12 40.07 (1) ~~(1) (intro.)~~ Notwithstanding any other statutory provision, individual  
 13 ~~request for information described in this section.~~  
 14 ~~personal information in the records of the department is not a public record and shall~~  
 15 ~~not be disclosed, unless subject to access under s. 19.35 (1), but access to that~~  
 16 ~~information may be provided, unless otherwise ordered under s. 19.356 (7), if:~~

17 ~~(3) The department shall not furnish lists of participants, annuitants or~~  
 18 ~~beneficiaries to any person or organization except as required for the proper~~  
 19 ~~administration of the department unless otherwise ordered under s. 19.356 (7).~~

(END)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs0070/2  
JTK:kmg:pg

3

Wanted Mon 4/2  
\$130

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 175

1 AN ACT to create <sup>(regenerate)</sup> 19.32 (1bg) and (2g), 19.356 and 40.07 (4) of the statutes;  
2 relating to: access to public employee personnel records and certain other  
3 public records containing personally identifiable information.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4 SECTION 1. 19.32 (1bg), <sup>(1dm)</sup> and <sup>(4)</sup> (2g) of the statutes are created to read:

5 19.32 (1bg) "Employee" means an individual who is employed by an authority,  
6 other than an individual holding a local public office or a state public office, ~~as defined~~  
7 ~~in s. 19.42~~, or any individual who is employed by an employer other than an  
8 authority. <sup>(1dm)</sup> "Local public office" has the meaning given in s. 19.42 (7w).

9 (2g) "Record subject" means an individual about whom personally identifiable  
10 information is contained in a record.

11 SECTION 2. 19.356 of the statutes is created to read:

<sup>(14)</sup> "State public office" has the meaning given in s. 19.42 (13),  
but does not include a position identified in s. 20.923 (6) (f) to  
(9m).

1           **19.356 Notice to record subject; right of action.** (1) Except as authorized  
2 in this section or as otherwise provided by statute, no authority is required to notify  
3 a record subject prior to providing to a requester access to a record containing  
4 information pertaining to that record subject, and no person is entitled to judicial  
5 review of the decision of an authority to provide a requester with access to a record.

6           (2) (a) Except as provided in par. (b) and except as otherwise required by law,  
7 an authority shall, before permitting access and within 72 hours after making a  
8 decision to permit access to a record, notify any record subject to whom the record  
9 pertains, either by certified mail with return receipt signed by the addressee or by  
10 personally serving the notice on the record subject, if the record contains any of the  
11 following:

12           1. Information concerning the authority's investigation into a disciplinary  
13 matter relating to an employee or a possible violation by an employee of a policy of  
14 the employee's employer, or of a statute, rule, regulation, or ordinance or in  
15 connection with the employee's employment.

16           2. Information prepared or provided by an employer concerning the home  
17 address or telephone number, or the social security account number, of an employee  
18 of that employer, if the employee expressly requests that the authority not provide  
19 access to that information.

20           3. Information relating to one or more employees that is used by the authority  
21 or by the employer of the employees for staff management planning or employee  
22 evaluation, including employee performance evaluations, judgments or  
23 recommendations concerning future salary adjustments or other employee wage  
24 treatments, management employee bonus plans, promotions, job assignments,  
25 letters of reference, or other comments or ratings relating to individual employees.

1           4. Information pertaining to an employee's employment examination, except  
2 an examination score if access to that score is not otherwise prohibited.

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

8           (3) The notice under sub. (2) (a) shall briefly describe the requested record and  
9 include a description of the rights of the record subject under this section.

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

13          (5) Within 10 days after receipt of a notice under sub. (2) (a), any record subject  
14 may commence an action seeking a court order to restrain the authority from  
15 providing access to the requested record. If a record subject commences such an  
16 action, the record subject shall name the authority as a defendant. The record  
17 subject shall also join the requester as a party to the action under s. 803.03.

18          (6) An authority shall not provide access to a requested record within 12 days  
19 of sending a notice pertaining to that record under sub. (2) (a). In addition, if the  
20 record subject commences an action under sub. (5), the authority shall not provide  
21 access to the requested record during pendency of the action. If the record subject  
22 appeals or petitions for review of a decision of the court or the time for appeal or  
23 petition for review of a decision adverse to the record subject has not expired, the  
24 authority shall not provide access to the requested record until any appeal is decided,  
25 until the period for appealing or petitioning for review expires, until a petition for

1 review is denied, or until the authority receives written notice from the record subject  
2 that an appeal or petition for review will not be filed, whichever occurs first.

3 (7) If the record subject demonstrates that the harm to his or her privacy or  
4 reputational interests caused by disclosure of the information contained in the  
5 requested record outweighs the public interest in disclosure of that information, the  
6 court shall restrain the authority from providing access to that record under s. 19.35  
7 (1).

8 (8) The court shall not grant any request by a requester to delay the  
9 proceedings. The court shall issue a decision within 10 days after the filing of the  
10 summons and complaint and proof of service of the summons and complaint upon the  
11 defendant and the requester, unless a party demonstrates cause for extension of this  
12 period. In any event, the court shall issue a decision within 30 days after those filings  
13 are complete.

14 (9) If a party appeals a decision of the court under sub. (8), the court of appeals  
15 shall grant precedence to the appeal over all other matters not accorded similar  
16 precedence by law.

17 **SECTION 3.** 40.07 (4) of the statutes is created to read:

18 40.07 (4) Section 19.356 does not apply to any request for information described  
19 in this section.

20 (END)



**Barman, Mike**

---

**From:** Barman, Mike

**Sent:** Tuesday, April 03, 2001 9:33 AM

**To:** Williams, Vincent

**Subject:** LRBs0070/3 (attached - per your request)

04/03/2001