



State of Wisconsin
2001 - 2002 LEGISLATURE

DNOTE
Wanted HV 12/13-2PM

LRB-2119/1 2

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2001 BILL

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} ~~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 outweighs 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

extended

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decision to apply to all public records. ^{differ} 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). ~~The rights created by the (Woznicki) and (Milwaukee)~~

^{in part} 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. ^{Teachers decisions are not currently reflected in the statutes.}

~~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 five 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 ten days, the record may not be released unless the court so permits.~~ ^{creates two exceptions. First, the bill}

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 to a collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. ^{The information includes} ~~Affected records include personal medical records, records containing home addresses and telephone numbers, and an affected employee requests the officer or agency to withhold access to that information; 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.~~ ^{or ratings} ^{provide} ^{IS} ^{unless} ^{including} ^{information} ^{current investigation of a} ^{contained in personnel records of public or private employees other than certain high-ranking officials} ^{information relating to}

Letters of reference

information relating to one or more specific employees that is used by the employer of the employees for

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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 ~~(2g)~~ ^{(1bg), (1de), (1dm), and (4)} of the statutes are created to read:

2 19.32 (1) ^{bg} "Public employee" means an individual who is ^{engaged in} employed by an
3 employment in this state, other than an individual holding a state public authority, other than an individual holding an elective office.
4 office or a local public office.

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

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.

(a) Except as provided in pars. (b) and (c) and as otherwise provided by law, if

12 (2) If an authority decides to permit access to a record created or ~~maintained~~ ^{kept}

13 by the authority ~~under 19.35(1)~~ ^{involving the employee} as a result of the authority's investigation into a
14 disciplinary matter or possible violation ^{by the employee} of a statute, ^{ordinance,} rule, regulation, or policy of the
15 employee's employer, or any record obtained by the authority through a subpoena or 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 ^{certified} registered mail with return
18 receipt signed by the addressee or by personally serving the notice on the subject.

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

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

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(4) Within 10 days after receipt of a notice under sub. (2), any record subject may commence an action seeking a court order to restrain the authority from providing access to the requested record. If a record subject commences such an

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action, the record subject shall name the authority as a defendant. ^{Notwithstanding s. 803.09,} ~~The record subject shall also join the requester as a party to the action under s. 803.02.~~ *the requester may intervene in the action as a matter of right.*

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

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

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right to inspect, copy, or receive copies of records in making its decision.

(6) The court shall apply substantive common law principles construing the right to inspect, copy, or receive copies of records in making its decision.

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

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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 (8) 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~~ ^{containing the following information} EMPLOYEE PERSONNEL RECORDS. Unless access is specifically
10 authorized or required by statute, an authority shall not provide access to ~~the~~ ^{an}
11 following records ^{an} under s. 19.35 (1), except to ~~a~~ ^{an} employee or the employee's
12 representative to the extent required under s. 103.13 or to a collective bargaining
13 representative to the extent required to fulfill a duty to bargain ^{under ch. 111} or pursuant to a
14 collective bargaining agreement under ch. 111:

- 15 ~~(a) Personal medical records of a public employee.~~
- 16 ~~(a) (b) Records containing the home address or telephone number of a public~~ ^{Information prepared or provided by an employer concerning}
17 employee, ~~if~~ ^{unless} the employee requests ~~the~~ ^{authorizes} authority to ~~withhold~~ ^{provide} access to such records.
- 18 ~~(b) (c) Records relating to the investigation of a possible criminal offense or~~ ^{Information}
19 possible misconduct connected with employment by ~~a public~~ ^{an} employee prior to
20 disposition of the investigation.

- 21 ~~(d) Letters of reference pertaining to a public employee.~~
- 22 ~~(c) (e) Any record~~ ^{Information} pertaining to an ^{employee's} employment examination, except an
23 examination score if access to that score is not otherwise prohibited.
- 24 ~~(d) (f) Records of any material used by an authority for staff management~~ ^{Information relating to one or more specific employees that is}
25 planning, including performance evaluations, judgments ^(or by the employer of the employees) or recommendations

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1 concerning future salary adjustments or other wage treatments, management bonus
2 plans, promotions, job assignments, ^{letters of reference,} or other comments or ratings relating to ~~public~~
3 employees.

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

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

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

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

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

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

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

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2119/lins
JTK.....

INS 3-3: ✓

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

(1dm) "Local public office" has the meaning given in s. 19.42 (7w), and also includes any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency, or division of the local governmental unit.

INS 3-5: ✓

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

SECTION 1. 19.345 of the statutes is created to read:

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

INS 3-20:1 ✓

(b) Paragraph (a) does not apply to an investigation by an authority who or which is charged with the responsibility to enforce a law, ordinance, rule, or regulation that is applicable to individuals other than officers or employees of the authority or persons under contract with the authority unless the investigation involves an officer or employee of the authority or a person under contract with the authority. ✓

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LPS: This is from p. 2, 3rd para, of 2119/1

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other

with certain exceptions,

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public or private employees, other than certain high-ranking officials,

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 five 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 ten days, the record may not be released unless the court so permits.

ordinance,

relating to an employee

involving the employee

by the employee

employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant

The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

SECTION 1. 230.13 (3) of the statutes is renumbered 230.13 (3) (a).

SECTION 2. 230.13 (3) (b) of the statutes is created to read:

230.13 (3) (b) The secretary and the administrator may provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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treatments, management-employee bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to individual employees.

4. Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited. This subdivision does not apply to information relating to the hiring or recruitment process that is exchanged between the department of employment relations and an authority that is a unit of state government.

(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.

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

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2119/2dn

JTK.....
Kim

Senator Erpenbach:

✓
Please look at proposed s. 19.356 (2) (b) in LRB-3922/1 (relating to exempt activities under s. 103.13 and ch. 111, stats.) and let me know if you want this paragraph to be incorporated.

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

Due 12/13 — By 2 p.m.

LRB Number: 2119, 12

Nonsubmittal Form

**WPOs: DO NOT FORWARD THIS DRAFT FOR SUBMITTAL,
UNLESS INSTRUCTED TO DO SO BY THE DRAFTING
ATTORNEY.**



Return everything to the primary drafting attorney.

After you have completed typing this draft, return the camera-ready copy to the primary drafting attorney, along with the drafting file. Also, forward the electronic file to the primary drafting attorney for the task of drafting.



Return only the camera-ready copy to the primary drafting attorney.

After you have completed typing this draft, clip this form to the camera-ready copy and return these materials to the primary drafting attorney. Place the drafting file in the HOLD basket in the WPO room. Forward the electronic file to Typing -- lrb_wpo, so that the electronic file can be viewed by all WPOs.

When the attorney finishes reviewing the draft, the attorney will bring the camera-ready copy back to the WPO room. If the attorney has found any typos or minor corrections, correct the draft as indicated and print out a new camera-ready copy. Take the final camera-ready copy, retrieve the drafting file from the HOLD basket in the WPO room, discard this form, place the camera-ready copy and the drafting file in the PA submit basket and forward the electronic file to the PAs for submitting. (If, after reviewing the draft, the attorney decides to redraft it, give the attorney the drafting file and forward the electronic file to the attorney for drafting.)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2119/2³dn
JTK:kmgjf

December 13, 2001

Senator Erpenbach:

Please look at proposed s. 19.356 (2) (b) in LRB-3922/1 (relating to exempt activities under s. 103.13 and ch. 111, stats.) and let me know if you want this paragraph to be incorporated.

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



2001 BILL

Now
D-NOTE

1 AN ACT ^{Jim. Cat.} to renumber 230.13 (3); to amend 40.07 (1) (intro.) and (3), 230.13 (1)
2 (intro.) and 233.13 (intro.); and to create 19.32 (1bg), (1de), (1dm), (2g) and (4),
3 19.345, 19.356, 19.36 (10) and 230.13 (3) (b) of the statutes; relating to: access
4 to public records.

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 outweighs 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 extended this

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decision to apply to all public records. The decisions differ 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). The rights created by the *Woznicki* and *Milwaukee Teachers* decisions are not currently reflected in the statutes.

This bill affirms current statutory law in part 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.

The bill also creates two exceptions. First, the bill provides that no state or local governmental officer or agency may release certain information contained in personnel records of public or private employees, other than certain high-ranking officials, in response to a request for inspection, except to ~~a public~~ ^{an} employee or employee's representative to the extent required under current law or to a ~~collective~~ ^{public} bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. The information includes home addresses and telephone numbers, unless an affected employee requests the officer or agency to provide access to that information; information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation; information relating to employment examinations, except examination scores if not otherwise prohibited; and other information relating to one or more specific employees that is used by the employer of the employees for staff management planning, including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference, and comments or ratings relating to employees. Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

Secondly, the bill creates a statutory procedure under which public or private employees, other than certain high-ranking officials, who are the subjects of certain other 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. Under the bill, with certain exceptions, if the officer or agency having custody of a public record receives a request to provide access to a record containing information relating to an employee as the result of an investigation by the officer or agency into a disciplinary matter involving the employee or possible violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant, 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 five days, of his or her intent to seek

unless otherwise authorized
or required by statute

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a court order restraining release of the record and files an action seeking such an order within ten days, the record may not be released unless the court so permits. The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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

1 **SECTION 1.** 19.32 (1bg), (1de), (1dm), (2g) and (4) of the statutes are created to
2 read:

3 19.32 (1bg) "Employee" means an individual who is engaged in employment
4 in this state, other than an individual holding a state public office or a local public
5 office.

6 (1de) "Local governmental unit" has the meaning given in s. 19.42 (7u).

7 (1dm) "Local public office" has the meaning given in s. 19.42 (7w), and also
8 includes any appointive office or position of a local governmental unit in which an
9 individual serves as the head of a department, agency, or division of the local
10 governmental unit.

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

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

15 **SECTION 2.** 19.345 of the statutes is created to read:

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1 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is
2 provided for performing an act, whether the period is expressed in hours or days, the
3 whole of Saturday, Sunday and any legal holiday, from midnight to midnight, shall
4 be excluded in computing the period.

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

6 **19.356 Notice to record subject; right of action.** (1) Except as authorized
7 in this section or as otherwise provided by statute, no authority is required to notify
8 a record subject prior to providing to a requester access to a record containing
9 information pertaining to that record subject, and no person is entitled to judicial
10 review of the decision of an authority to provide a requester with access to a record.

11 (2) (a) Except as provided in pars. (b) and (c) and as otherwise ^{authorized or required} ~~provided by law,~~ ^{by}
12 if an authority decides to permit access to a record containing information relating ^{statute}
13 to an employee that is created or kept by the authority as a result of the authority's
14 investigation into a disciplinary matter involving the employee or possible violation
15 by the employee of a statute, ordinance, rule, regulation, or policy of the employee's
16 employer, or any record obtained by the authority through a subpoena or search
17 warrant, the authority shall, before permitting access and within 72 hours after
18 making the decision to permit access, serve written notice of that decision on any
19 record subject to whom that record pertains, either by certified mail or by personally
20 serving the notice on the subject. The notice shall briefly describe the requested
21 record and include a description of the rights of the record subject under subs. (3) and
22 (4).

23 (b) Paragraph (a) does not apply to an investigation by an authority who or
24 which is charged with the responsibility to enforce a law, ordinance, rule, or
25 regulation that is applicable to individuals other than officers or employees of the

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1 authority or persons under contract with the authority unless the investigation
2 involves an officer or employee of the authority or a person under contract with the
3 authority.

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

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

10 (4) Within 10 days after receipt of a notice under sub. (2), any record subject
11 may commence an action seeking a court order to restrain the authority from
12 providing access to the requested record. If a record subject commences such an
13 action, the record subject shall name the authority as a defendant. Notwithstanding
14 s. 803.09, the requester may intervene in the action as a matter of right.

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

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

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

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

13 **SECTION 4.** 19.36 (10) of the statutes is created to read:

14 **19.36 (10) EMPLOYEE PERSONNEL RECORDS.** Unless access is specifically
15 authorized or required by statute, an authority shall not provide access to records
16 containing the following information under s. 19.35 (1), except to an employee or the
17 employee's representative to the extent required under s. 103.13 or to a collective
18 bargaining representative to the extent required to fulfill a duty to bargain under ch.
19 111 or pursuant to a collective bargaining agreement under ch. 111:

20 (a) Information prepared or provided by an employer concerning the home
21 address or telephone number of an employee, unless the employee authorizes the
22 authority to provide access to such records.

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

BILL

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

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

9 **SECTION 5.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

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

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 6.** 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 7.** 230.13 (3) of the statutes is renumbered 230.13 (3) (a).

22 **SECTION 8.** 230.13 (3) (b) of the statutes is created to read:

23 230.13 (3) (b) The secretary and the administrator may provide any ^{state}
24 agency with personnel information relating to the hiring and recruitment process,

BILL

1 including specifically the examination scores and ranks and other evaluations of
2 applicants.

3 **SECTION 9.** 233.13 (intro.) of the statutes is amended to read:

4 **233.13 Closed records.** (intro.) Except as provided in ~~s.~~ ss. 19.36 (10) and
5 103.13, the authority may keep records of the following personnel matters closed to
6 the public:

7 (END)

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

LRB-2119/3dn
JTK:kmg:kjf

December 13, 2001

Senator Erpenbach:

Please look at proposed s. 19.356 (2) (b) in LRB-3922/1 (relating to exempt activities under s. 103.13 and ch. 111, stats.) and let me know if you want this paragraph to be incorporated.

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

Barman, Mike

From: Barman, Mike
Sent: Thursday, December 13, 2001 4:00 PM
To: Knutson, Tryg
Subject: LRB-2119/3 (attached) (from JTK)



01-2119/3



01-2119/3dn



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2119/8 4
JTK&RAC:kmg:jf

WANTED Mon 1/14 - 8:30AM

2001 BILL

1 **AN ACT** *to renumber* 230.13 (3); *to amend* 40.07 (1) (intro.) and (3), 230.13 (1)
2 (intro.) and 233.13 (intro.); and *to create* 19.32 (1bg), (1de), (1dm), (2g) and (4),
3 19.345, 19.356, 19.36 (10) and 230.13 (3) (b) of the statutes; **relating to:** access
4 to public records.

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 outweighs 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 extended this

BILL

decision to apply to all public records. The decisions differ 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). The rights created by the *Woznicki* and *Milwaukee Teachers* decisions are not currently reflected in the statutes.

This bill affirms current statutory law in part 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.

The bill also creates two exceptions. First, the bill provides that, unless otherwise authorized or required by statute, no state or local governmental officer or agency may release certain information contained in personnel records of public or private employees, other than certain high-ranking officials, in response to a request for inspection, except to an employee or employee's representative to the extent required under current law or to a public employee collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. The information includes home addresses and telephone numbers, unless an affected employee requests the officer or agency to provide access to that information; information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation; information relating to employment examinations, except examination scores if not otherwise prohibited; and other information relating to one or more specific employees that is used by the employer of the employees for staff management planning, including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference, and comments or ratings relating to employees. Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

Secondly, the bill creates a statutory procedure under which public or private employees, other than certain high-ranking officials, who are the subjects of certain other 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. Under the bill, with certain exceptions, if the officer or agency having custody of a public record receives a request to provide access to a record containing information relating to an employee as the result of an investigation by the officer or agency into a disciplinary matter involving the employee or possible violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant, 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 five days, of his or her intent to seek

BILL

a court order restraining release of the record and files an action seeking such an order within ten days, the record may not be released unless the court so permits. The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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

1 **SECTION 1.** 19.32 (1bg), (1de), (1dm), (2g) and (4) of the statutes are created to
2 read:

3 **19.32 (1bg)** "Employee" means an individual who is engaged in employment
4 in this state, other than an individual holding a state public office or a local public
5 office.

6 **(1de)** "Local governmental unit" has the meaning given in s. 19.42 (7u).

7 **(1dm)** "Local public office" has the meaning given in s. 19.42 (7w), and also
8 includes any appointive office or position of a local governmental unit in which an
9 individual serves as the head of a department, agency, or division of the local
10 governmental unit. *but does not include any office or position filled by a*

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

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

15 **SECTION 2.** 19.345 of the statutes is created to read:

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municipal employee, as defined in s. 111.70 (1) (i) ✓

BILL

1 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is
2 provided for performing an act, whether the period is expressed in hours or days, the
3 whole of Saturday, Sunday and any legal holiday, from midnight to midnight, shall
4 be excluded in computing the period.

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

6 **19.356 Notice to record subject; right of action.** (1) Except as authorized
7 in this section or as otherwise provided by statute, no authority is required to notify
8 a record subject prior to providing to a requester access to a record containing
9 information pertaining to that record subject, and no person is entitled to judicial
10 review of the decision of an authority to provide a requester with access to a record.

11 (2) (a) Except as provided in pars. (b) ^{to (d)} ~~and (c)~~ and as otherwise authorized or
12 required by statute, if an authority decides to permit access to a record containing
13 information relating to an employee that is created or kept by the authority as a
14 result of the authority's ^{an} investigation into a disciplinary matter involving the
15 employee or possible violation by the employee of a statute, ordinance, rule,
16 regulation, or policy of the employee's employer, or any record obtained by the
17 authority through a subpoena or search warrant, the authority shall, before
18 permitting access and within 72 hours after making the decision to permit access,
19 serve written notice of that decision on any record subject to whom that record
20 pertains, either by certified mail or by personally serving the notice on the subject.

21 The notice shall briefly describe the requested record and include a description of the
22 rights of the record subject under subs. (3) and (4).
IN 24-22

23 (c) Paragraph (a) does not apply to an investigation by an authority who or
24 which is charged with the responsibility to enforce a law, ordinance, rule, or
25 regulation that is applicable to individuals other than officers or employees of the

BILL

1 authority or persons under contract with the authority unless the investigation
2 involves an officer or employee of the authority or a person under contract with the
3 authority.

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

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

10 (4) Within 10 days after receipt of a notice under sub. (2), any record subject
11 may commence an action seeking a court order to restrain the authority from
12 providing access to the requested record. If a record subject commences such an
13 action, the record subject shall name the authority as a defendant. Notwithstanding
14 s. 803.09, the requester may intervene in the action as a matter of right.

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

BILL

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

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

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

13 SECTION 4. 19.36 (10) of the statutes is created to read:

14 19.36 (10) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically
15 authorized or required by statute, an authority shall not provide access to records
16 containing the following information under s. 19.35 (1), except to an employee or the
17 employee's representative to the extent required under s. 103.13 or to a ^{recognized or certified} collective
18 bargaining representative to the extent required to fulfill a duty to bargain under ch.
19 111 or pursuant to a collective bargaining agreement under ch. 111:

20 (a) Information prepared or provided by an employer concerning the home
21 address or telephone number of an employee, unless the employee authorizes the
22 authority to provide access to such ^{information} ~~records~~.

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

BILL

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

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

9 **SECTION 5.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

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

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 6.** 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 7.** 230.13 (3) of the statutes is renumbered 230.13 (3) (a).

22 **SECTION 8.** 230.13 (3) (b) of the statutes is created to read:

23 230.13 (3) (b) The secretary and the administrator may provide any agency
24 with personnel information relating to the hiring and recruitment process, including
25 specifically the examination scores and ranks and other evaluations of applicants.

INS 4-22 ✓

treatments, management employee bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to individual employees.

4. Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited. This subdivision does not apply to information relating to the hiring or recruitment process that is exchanged between the department of employment relations and an authority that is a unit of state government.

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

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

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

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

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



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2119/4 5
JTK&RAC:kmg:pg

WANTED THU 1/31

2001 BILL

1 AN ACT ^{Sen. Cat.} to renumber 230.13 (3); to amend 40.07 (1) (intro.) and (3), 230.13 (1)
2 (intro.) and 233.13 (intro.); and to create 19.32 (1bg), (1de), (1dm), (2g) and (4),
3 19.345, 19.356, 19.36 (10) and 230.13 (3) (b) of the statutes; relating to: access
4 to public records.

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 outweighs 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 extended this

BILL

decision to apply to all public records. The decisions differ 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). The rights created by the *Woznicki* and *Milwaukee Teachers* decisions are not currently reflected in the statutes.

This bill affirms current statutory law in part 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.

The bill also creates two exceptions. First, the bill provides that, unless otherwise authorized or required by statute, no state or local governmental officer or agency may release certain information contained in personnel records of public or private employees, other than certain high-ranking officials, in response to a request for inspection, except to an employee or employee's representative to the extent required under current law or to a public employee collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. The information includes home addresses and telephone numbers, unless an affected employee requests the officer or agency to provide access to that information; information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation; information relating to employment examinations, except examination scores if not otherwise prohibited; and other information relating to one or more specific employees that is used by the employer of the employees for staff management planning, including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference, and comments or ratings relating to employees. Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

Secondly, the bill creates a statutory procedure under which public or private employees, other than certain high-ranking officials, who are the subjects of certain other 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. Under the bill, with certain exceptions, if the officer or agency ~~having custody of a public record~~ receives a request to provide access to a record containing information relating to an employee as the result of an investigation by the officer or agency into a disciplinary matter involving the employee or possible violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant, 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 five days, of his or her intent to seek

the officer or agency having custody of a public record continues to apply the common law balancing test in determining accessibility of public records, unless otherwise provided under statutory or common law. However,

For records other than those described above,

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a court order restraining release of the record and files an action seeking such an order within ten days, the record may not be released unless the court so permits. The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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

1 **SECTION 1.** 19.32 (1bg), (1de), (1dm), (2g) and (4) of the statutes are created to
2 read:

3 **19.32 (1bg)** “Employee” means an individual who is engaged in employment
4 in this state, other than an individual holding a state public office or a local public
5 office.

6 **(1de)** “Local governmental unit” has the meaning given in s. 19.42 (7u).

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

12 **(2g)** “Record subject” means an individual about whom personally identifiable
13 information is contained in a record.

14 **(4)** “State public office” has the meaning given in s. 19.42 (13), but does not
15 include a position identified in s. 20.923 (6) (em) to (gm).

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1 **SECTION 2.** 19.345 of the statutes is created to read:

2 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is
3 provided for performing an act, whether the period is expressed in hours or days, the
4 whole of Saturday, Sunday and any legal holiday, from midnight to midnight, shall
5 be excluded in computing the period.

6 **SECTION 3.** 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.

12 (2) (a) Except as provided in pars. (b) ^{and (c)} ~~(b)~~ and as otherwise authorized or
13 required by statute, if an authority decides to permit access to a record containing
14 information relating to an employee that is created or kept by the authority as a
15 result of an investigation into a disciplinary matter involving the employee or
16 possible violation by the employee of a statute, ordinance, rule, regulation, or policy
17 of the employee's employer, or any record obtained by the authority through a
18 subpoena or search warrant, the authority shall, before permitting access and within
19 72 hours after making the decision to permit access, serve written notice of that
20 decision on any record subject to whom that record pertains, either by certified mail
21 or by personally serving the notice on the subject. The notice shall briefly describe
22 the requested record and include a description of the rights of the record subject
23 under subs. (3) and (4).

24 (b) Paragraph (a) does not apply to an authority who provides access to a record
25 pertaining to an employee to the employee who is the subject of the record or to his

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1 or her representative to the extent required under s. 103.13 or to a recognized or
2 certified collective bargaining representative to the extent required to fulfill a duty
3 to bargain or pursuant to a collective bargaining agreement under ch. 111.

4 ~~(e) Paragraph (a) does not apply to an investigation by an authority who or~~
5 ~~which is charged with the responsibility to enforce a law, ordinance, rule, or~~
6 ~~regulation that is applicable to individuals other than officers or employees of the~~
7 ~~authority or persons under contract with the authority unless the investigation~~
8 ~~involves an officer or employee of the authority or a person under contract with the~~
9 ~~authority.~~

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

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

16 (4) Within 10 days after receipt of a notice under sub. (2), any record subject
17 may commence an action seeking a court order to restrain the authority from
18 providing access to the requested record. If a record subject commences such an
19 action, the record subject shall name the authority as a defendant. Notwithstanding
20 s. 803.09, the requester may intervene in the action as a matter of right.

21 (5) An authority shall not provide access to a requested record within 12 days
22 of sending a notice pertaining to that record under sub. (2). In addition, if the record
23 subject commences an action under sub. (4), the authority shall not provide access
24 to the requested record during pendency of the action. If the record subject appeals
25 or petitions for review of a decision of the court or the time for appeal or petition for

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1 review of a decision adverse to the record subject has not expired, the authority shall
2 not provide access to the requested record until any appeal is decided, until the
3 period for appealing or petitioning for review expires, until a petition for review is
4 denied, or until the authority receives written notice from the record subject that an
5 appeal or petition for review will not be filed, whichever occurs first.

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

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

17 **SECTION 4.** 19.36 (10) of the statutes is created to read:

18 19.36 (10) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically
19 authorized or required by statute, an authority shall not provide access to records
20 containing the following information under s. 19.35 (1), except to an employee or the
21 employee's representative to the extent required under s. 103.13 or to a recognized
22 or certified collective bargaining representative to the extent required to fulfill a duty
23 to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch.
24 111:

BILL

1 (a) Information prepared or provided by an employer concerning the home
2 address or telephone number of an employee, unless the employee authorizes the
3 authority to provide access to such information.

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

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

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

15 **SECTION 5.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

16 40.07 (1) (intro.) Notwithstanding any other statutory provision, individual
17 personal information in the records of the department is not ~~a public record and shall~~
18 ~~not be disclosed, unless~~ subject to access under s. 19.35 (1), but access to that
19 information may be provided, unless prohibited under s. 19.36 (10), if:

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

23 **SECTION 6.** 230.13 (1) (intro.) of the statutes is amended to read:

Emery, Lynn

From: Emery, Lynn
Sent: Friday, February 01, 2002 3:32 PM
To: Laundrie, Julie
Subject: LRB-2119/5 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

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

Kuesel, Jeffery

From: Laundrie, Julie
Sent: Monday, February 04, 2002 2:41 PM
To: 'sgeorge@wnanews.com'
Cc: Kuesel, Jeffery; 'cherneym@weac.org'
Subject: Slash 6

Hi Sandra,

Melissa has proposed the following changes to /5 - Jon would like to do a /6 as soon as possible rather than an amendment if you don't think the changes are a problem. To me they seem technical - but I wanted to touch base before I requested /6. Please let me know as soon as possible - thank you.

Julie

1. page 6, line 16-17

move the words "under s. 19.35(1)" up to immediately follow the words "provide access" in the previous line. We think the meaning is much clearer with this change.

2. Page 6, line 22

Add the word "maintained" after the word "information", so that it reads: "(a) Information maintained, prepared or provided by an employer..."

The language of this section was changed from the original, in order to cover private employees. Our concern is that it may now exclude public employees where the address and phone information has been provided by the employee to the employer, and therefore is not "prepared or provided by the employer". This change would make it clear that that information is covered.

Julie Laundrie
Office of Senator Jon Erpenbach
Room 8 South, 6-6670



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2119/5 6
JTK&RAC:kmg:jf

Wanted NE 2/5 - Ans

2001 BILL

1 AN ACT to renumber 230.13 (3); to amend 40.07 (1) (intro.) and (3), 230.13 (1)
2 (intro.) and 233.13 (intro.); and to create 19.32 (1bg), (1de), (1dm), (2g) and (4),
3 19.345, 19.356, 19.36 (10) and 230.13 (3) (b) of the statutes; relating to: access
4 to public records.

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 outweighs 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 extended this

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decision to apply to all public records. The decisions differ 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). The rights created by the *Woznicki* and *Milwaukee Teachers* decisions are not currently reflected in the statutes.

This bill affirms current statutory law in part 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.

The bill also creates two exceptions. First, the bill provides that, unless otherwise authorized or required by statute, no state or local governmental officer or agency may release certain information contained in personnel records of public or private employees, other than certain high-ranking officials, in response to a request for inspection, except to an employee or employee's representative to the extent required under current law or to a public employee collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. The information includes home addresses and telephone numbers, unless an affected employee requests the officer or agency to provide access to that information; information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation; information relating to employment examinations, except examination scores if not otherwise prohibited; and other information relating to one or more specific employees that is used by the employer of the employees for staff management planning, including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference, and comments or ratings relating to employees. Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

Secondly, for records other than those described above, the bill creates a statutory procedure under which public or private employees, other than certain high-ranking officials, who are the subjects of certain other 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. Under the bill, the officer or agency having custody of a public record continues to apply the common law balancing test in determining accessibility of public records, unless otherwise provided under statutory or common law. However, with certain exceptions, if the officer or agency receives a request to provide access to a record containing information relating to an employee as the result of an investigation by the officer or agency into a disciplinary matter involving the employee or possible violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant, the officer

(X)

authorizes

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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 five 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 ten days, the record may not be released unless the court so permits. The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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

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

3 19.32 (1bg) "Employee" means an individual who is engaged in employment
4 in this state, other than an individual holding a state public office or a local public
5 office.

6 (1de) "Local governmental unit" has the meaning given in s. 19.42 (7u).

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

12 (2g) "Record subject" means an individual about whom personally identifiable
13 information is contained in a record.

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

3 **SECTION 2.** 19.345 of the statutes is created to read:

4 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is
5 provided for performing an act, whether the period is expressed in hours or days, the
6 whole of Saturday, Sunday and any legal holiday, from midnight to midnight, shall
7 be excluded in computing the period.

8 **SECTION 3.** 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) (a) Except as provided in pars. (b) and (c) and as otherwise authorized or
15 required by statute, if an authority decides to permit access to a record containing
16 information relating to an employee that is created or kept by the authority as a
17 result of an investigation into a disciplinary matter involving the employee or
18 possible violation by the employee of a statute, ordinance, rule, regulation, or policy
19 of the employee's employer, or any record obtained by the authority through a
20 subpoena or search warrant, the authority shall, before permitting access and within
21 72 hours after making the decision to permit access, serve written notice of that
22 decision on any record subject to whom that record pertains, either by certified mail
23 or by personally serving the notice on the subject. The notice shall briefly describe
24 the requested record and include a description of the rights of the record subject
25 under subs. (3) and (4).

BILL

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

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

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

12 (4) Within 10 days after receipt of a notice under sub. (2), any record subject
13 may commence an action seeking a court order to restrain the authority from
14 providing access to the requested record. If a record subject commences such an
15 action, the record subject shall name the authority as a defendant. Notwithstanding
16 s. 803.09, the requester may intervene in the action as a matter of right.

17 (5) An authority shall not provide access to a requested record within 12 days
18 of sending a notice pertaining to that record under sub. (2). In addition, if the record
19 subject commences an action under sub. (4), the authority shall not provide access
20 to the requested record during pendency of the action. If the record subject appeals
21 or petitions for review of a decision of the court or the time for appeal or petition for
22 review of a decision adverse to the record subject has not expired, the authority shall
23 not provide access to the requested record until any appeal is decided, until the
24 period for appealing or petitioning for review expires, until a petition for review is

BILL

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

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

6 (7) The court shall issue a decision within 10 days after the filing of the
7 summons and complaint and proof of service of the summons and complaint upon the
8 defendant and the requester, unless a party demonstrates cause for extension of this
9 period. In any event, the court shall issue a decision within 30 days after those filings
10 are complete.

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

14 SECTION 4. 19.36 (10) of the statutes is created to read:

15 19.36 (10) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically
16 authorized or required by statute, an authority shall not provide access to records
17 containing the following information ^{under s. 19.35(1)} ~~under s. 19.35(1)~~ except to an employee or the
18 employee's representative to the extent required under s. 103.13 or to a recognized
19 or certified collective bargaining representative to the extent required to fulfill a duty
20 to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch.
21 111:

22 (a) Information ^{maintained,} prepared, or provided by an employer concerning the home
23 address or telephone number of an employee, unless the employee authorizes the
24 authority to provide access to such information.

BILL

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

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

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

12 **SECTION 5.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

13 40.07 (1) (intro.) Notwithstanding any other statutory provision, individual
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 prohibited under s. 19.36 (10), if:

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

20 **SECTION 6.** 230.13 (1) (intro.) of the statutes is amended to read:

21 230.13 (1) (intro.) Except as provided in sub. (3) and ~~s. ss. 19.36 (10) and~~ 103.13,
22 the secretary and the administrator may keep records of the following personnel
23 matters closed to the public:

24 **SECTION 7.** 230.13 (3) of the statutes is renumbered 230.13 (3) (a).

25 **SECTION 8.** 230.13 (3) (b) of the statutes is created to read:

Basford, Sarah

From: Basford, Sarah
Sent: Tuesday, February 05, 2002 9:22 AM
To: Sen.Erpenbach
Subject: LRB -2119/6 (attached)



01-2119/6

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us

Kuesel, Jeffery

From: Laundrie, Julie
Sent: Tuesday, February 12, 2002 10:46 AM
To: Kuesel, Jeffery
Subject: FW: changes to Sec 19.356(2)(a) of the bill

Hi Jeff,

Here are /7 changes: The bold and underscore does not show up but I figured you could figure it out. I have called Melissa to let her know the changes aren't highlighted and please call her if you have any questions.

I am hoping to notice this for hearing by the end of the day and don't want to until I have an idea when I will have /7 - can you give me an idea what your timeline is?

Also can you please have the /7 email to me. Thank you.

Julie

-----Original Message-----

From: Cherney, Melissa [mailto:CherneyM@WEAC.org]
Sent: Tuesday, February 12, 2002 9:58 AM
To: Julie Laundrie (E-mail)
Cc: James Friedman (E-mail)
Subject: changes to Sec 19.356(2)(a) of the bill

Julie,

Here are the changes we suggest to meet James' concerns. I have copied him as well. The additions should show up as bold and underscored.

The second change is simply editorial. We had a concern that, given the length of the paragraph, it may not be clear that records obtained by search warrant or subpoena are a separate category of records. (we still think it makes more sense to put that in a separate paragraph, but this is an alternative.)

I understand that you will forward this to Jeff Kuesel to make the changes. Thanks.

(2) (a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides to permit access to a record containing information relating to an employee that is created or kept by the authority as a result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or if an authority decides to permit access to any record obtained by the authority through a subpoena or search warrant, 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 that record pertains, either by certified mail 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).

Melissa A. Cherney, Staff Counsel
Wisconsin Education Association Council
P.O. Box 8003
Madison, WI 53708
(608) 298-2344
(800) 362-8034



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2119/6 7
JTK&RAC:kmg:jf

Wanted 10/2/12

2001 BILL

Gen. Asst.

1 AN ACT *to renumber* 230.13 (3); *to amend* 40.07 (1) (intro.) and (3), 230.13 (1)
2 (intro.) and 233.13 (intro.); and *to create* 19.32 (1bg), (1de), (1dm), (2g) and (4),
3 19.345, 19.356, 19.36 (10) and 230.13 (3) (b) of the statutes; **relating to:** access
4 to public records.

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 outweighs 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 extended this

BILL

decision to apply to all public records. The decisions differ 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). The rights created by the *Woznicki* and *Milwaukee Teachers* decisions are not currently reflected in the statutes.

This bill affirms current statutory law in part 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.

The bill also creates two exceptions. First, the bill provides that, unless otherwise authorized or required by statute, no state or local governmental officer or agency may release certain information contained in personnel records of public or private employees, other than certain high-ranking officials, in response to a request for inspection, except to an employee or employee's representative to the extent required under current law or to a public employee collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to an applicable collective bargaining agreement. The information includes home addresses and telephone numbers, unless an affected employee authorizes the officer or agency to provide access to that information; information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation; information relating to employment examinations, except examination scores if not otherwise prohibited; and other information relating to one or more specific employees that is used by the employer of the employees for staff management planning, including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference, and comments or ratings relating to employees. Currently, access to some of these records may be denied under specific laws governing these records or under the common law "balancing test."

Secondly, for records other than those described above, the bill creates a statutory procedure under which public or private employees, other than certain high-ranking officials, who are the subjects of certain other 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. Under the bill, the officer or agency having custody of a public record continues to apply the common law balancing test in determining accessibility of public records, unless otherwise provided under statutory or common law. However, with certain exceptions, if the officer or agency receives a request to provide access to a record containing information relating to an employee as the result of an investigation by the officer or agency into a disciplinary matter involving the employee or possible violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, or any record obtained by the officer or agency through a subpoena or search warrant, the officer

employment-related
if the officer or agency receives a request to provide access to

BILL

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

3 SECTION 2. 19.345 of the statutes is created to read:

4 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is
5 provided for performing an act, whether the period is expressed in hours or days, the
6 whole of Saturday, Sunday and any legal holiday, from midnight to midnight, shall
7 be excluded in computing the period.

8 SECTION 3. 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) (a) Except as provided in pars. (b) and (c) and as otherwise authorized or
15 required by statute, if an authority decides to permit access to a record containing
16 information relating to an employee that is created or kept by the authority as a
17 result of an investigation into a disciplinary matter involving the employee or
18 possible ^{employment-related} violation by the employee of a statute, ordinance, rule, regulation, or policy
19 of the employee's employer, or ^{if an authority decides to permit access to} any record obtained by the authority through a
20 subpoena or search warrant, the authority shall, before permitting access and within
21 72 hours after making the decision to permit access, serve written notice of that
22 decision on any record subject to whom that record pertains, either by certified mail
23 or by personally serving the notice on the subject. The notice shall briefly describe
24 the requested record and include a description of the rights of the record subject
25 under subs. (3) and (4).

BILL

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 five 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 ten days, the record may not be released unless the court so permits. The bill provides that the court shall apply common law principles interpreting the right of access to public records in making its decision.

Under current law, the secretary of employment relations and the administrator of the division of merit recruitment and selection in the department of employment relations may keep the following information closed to the public: examination scores and ranks and other evaluations of applicants; dismissals, demotions, and other disciplinary actions; pay survey data obtained from identifiable nonpublic employers; and the names of nonpublic employers contributing pay survey data. This bill authorizes the secretary and the administrator to provide any state agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

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

1 **SECTION 1.** 19.32 (1bg), (1de), (1dm), (2g) and (4) of the statutes are created to
2 read:

3 **19.32 (1bg)** "Employee" means an individual who is engaged in employment
4 in this state, other than an individual holding a state public office or a local public
5 office.

6 **(1de)** "Local governmental unit" has the meaning given in s. 19.42 (7u).

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

12 **(2g)** "Record subject" means an individual about whom personally identifiable
13 information is contained in a record.

BILL

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

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

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

12 (4) Within 10 days after receipt of a notice under sub. (2), any record subject
13 may commence an action seeking a court order to restrain the authority from
14 providing access to the requested record. If a record subject commences such an
15 action, the record subject shall name the authority as a defendant. Notwithstanding
16 s. 803.09, the requester may intervene in the action as a matter of right.

17 (5) An authority shall not provide access to a requested record within 12 days
18 of sending a notice pertaining to that record under sub. (2). In addition, if the record
19 subject commences an action under sub. (4), the authority shall not provide access
20 to the requested record during pendency of the action. If the record subject appeals
21 or petitions for review of a decision of the court or the time for appeal or petition for
22 review of a decision adverse to the record subject has not expired, the authority shall
23 not provide access to the requested record until any appeal is decided, until the
24 period for appealing or petitioning for review expires, until a petition for review is

BILL

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

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

6 (7) The court shall issue a decision within 10 days after the filing of the
7 summons and complaint and proof of service of the summons and complaint upon the
8 defendant and the requester, unless a party demonstrates cause for extension of this
9 period. In any event, the court shall issue a decision within 30 days after those filings
10 are complete.

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

14 **SECTION 4.** 19.36 (10) of the statutes is created to read:

15 19.36 (10) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically
16 authorized or required by statute, an authority shall not provide access under s.
17 19.35 (1) to records containing the following information, except to an employee or
18 the employee's representative to the extent required under s. 103.13 or to a
19 recognized or certified collective bargaining representative to the extent required to
20 fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining
21 agreement under ch. 111:

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

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

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

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

12 **SECTION 5.** 40.07 (1) (intro.) and (3) of the statutes are amended to read:

13 40.07 (1) (intro.) Notwithstanding any other statutory provision, individual
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 prohibited under s. 19.36 (10), if:

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

20 **SECTION 6.** 230.13 (1) (intro.) of the statutes is amended to read:

21 230.13 (1) (intro.) Except as provided in sub. (3) and ~~s.~~ ss. 19.36 (10) and 103.13,
22 the secretary and the administrator may keep records of the following personnel
23 matters closed to the public:

24 **SECTION 7.** 230.13 (3) of the statutes is renumbered 230.13 (3) (a).

25 **SECTION 8.** 230.13 (3) (b) of the statutes is created to read:

Barman, Mike

From: Barman, Mike
Sent: Tuesday, February 12, 2002 4:08 PM
To: Laundrie, Julie
Subject: LRB-2119/7 (attached - from JTK)



01-2119/7

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: 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

Emery, Lynn

From: Laundrie, Julie
Sent: Tuesday, February 12, 2002 4:30 PM
To: LRB.Legal
Subject: FW: LRB-2119/7 (attached - from JTK)

Can this please be jacketed for the Senate? Thank you - let me know if I can't do this via email

Julie Laundrie
Office of Senator Jon Erpenbach

----- [Laundrie, Julie] -Original Message-----

From: Barman, Mike
Sent: Tuesday, February 12, 2002 4:08 PM
To: Laundrie, Julie
Subject: I RR-2119/7 (attached - from JTK)



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Mike Barman

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