



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 47 [2003 Assembly Bill 196]	Access to Public Records
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 47 makes various changes to the conditions under which certain public records may be released.

BACKGROUND INFORMATION

Prior law, based on decisions of the Wisconsin Supreme Court, provided that before a record could be released under Wisconsin's Open Records Law, the record custodian was required to determine whether the release of the record would implicate the privacy or reputational interests of a public employee. If so, the custodian was required to notify the individual to whom the record referred, prior to the release, and give the individual an opportunity to appeal the release decision through a judicial proceeding. However, the Supreme Court's decisions did not establish any criteria for determining when privacy or reputational interests were implicated or for providing notice to affected parties. The decisions also did not address whether the right to notice and the right to judicial review extended to any record subject, regardless of whether the record subject was a public employee.

2003 WISCONSIN ACT 47

2003 Wisconsin Act 47 provides that if an authority decides to permit access to certain records, the right to notice of release of the record and the right to judicial review only applies with respect to the following:

1. A record containing information relating to an employee that is created or kept by an authority as a result of an investigation into a disciplinary matter involving the employee or a possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer, when the investigation is concluded.
2. A record obtained by the authority through a subpoena or search warrant.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

3. A record prepared by an employer, other than an authority, if that record contains information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information.
4. A record in the custody of the Public Service Commission (PSC) that would aid a competitor of a public utility in competition with the public utility that supplied the information held by the PSC.

Act 47 provides a system of expedited judicial review when a record subject attempts to prevent the release of a public record.

Although, under the Act, a person holding a local public office or a state public office does not have the right to judicial review of the decision to release a record, an authority is required to notify such a person of the release of a record containing information relating to the employment of that person. The official may augment the record to be released with written comments and documentation selected by the official. In general, the authority then must release the augmented record.

Act 47 generally closes to public access all of the following:

1. Information concerning an employee's home address, home email address, home telephone number, or Social Security number. This also applies to a person holding a local public office or a state public office except that closure does not apply to the home address of an official who has been elected or to the home address of an official who, as a condition of employment, is required to reside in a specified location.
2. Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to the disposition of the investigation.
3. Information pertaining to an employee's employment examination.
4. Information relating to staff management planning, including performance evaluations.
5. A record prepared or provided by an employer, performing under a contract requiring the payment of prevailing wages, that contains personally identifiable information relating to an employee of that employer. This information does not include an employee's work classification, hours of work, or wage or benefit payments received for work on such projects.

Effective Date: The Act takes effect on August 26, 2003.

Prepared by: Ronald Sklansky, Senior Staff Attorney

September 22, 2003

RS:ksm;tlu