



2009 ASSEMBLY BILL 489

October 13, 2009 – Introduced by Representatives BIES, HRAYCHUCK, BROOKS, CLARK, KESTELL, MURSAU, NERISON, A. OTT, PETROWSKI, SCHNEIDER, TOWNSEND and ZIGMUNT, cosponsored by Senators LEHMAN, HANSEN and OLSEN. Referred to Committee on Urban and Local Affairs.

- 1 **AN ACT** *to create* 19.35 (7) of the statutes; **relating to:** public access to certain
2 local government law enforcement records.

Analysis by the Legislative Reference Bureau

Currently, local governmental records are available for public inspection and copying except as specifically authorized or required by law, and except that if the custodian of a record demonstrates that the public interest in withholding access to information contained in a record outweighs the public interest in providing access to that information, access may be denied. Applying this test, the courts have permitted access to some law enforcement investigative records to be denied. In addition, under current law, law enforcement investigative records are exempted from the right of access whenever federal law or regulations so require or as a condition to receipt of aids by this state so require.

This bill provides that if a local governmental unit whose primary function is information storage, information technology processing, or other information technology usage (information technology unit) receives a request for access to information in a law enforcement record, the information technology unit must deny any portion of the request that relates to information in a law enforcement record. Under the bill, for purposes of access to public records, the information technology unit is not considered to be the custodian of the law enforcement record. For purposes of such access, the custodian is the local governmental unit for which the record is stored, processed, or otherwise used. The bill defines a law enforcement record as any record that is created or received by a law enforcement agency relating to an investigation conducted by a law enforcement agency or a request for a law

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enforcement agency to provide law enforcement services. No similar provisions exist currently.

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

1 **SECTION 1.** 19.35 (7) of the statutes is created to read:

2 **19.35 (7)** LOCAL INFORMATION TECHNOLOGY AUTHORITY RESPONSIBILITY FOR LAW
3 ENFORCEMENT RECORDS. (a) In this subsection:

4 1. “Law enforcement agency” has the meaning given s. 165.83 (1) (b).

5 2. “Law enforcement record” means a record that is created or received by a law
6 enforcement agency and that relates to an investigation conducted by a law
7 enforcement agency or a request for a law enforcement agency to provide law
8 enforcement services.

9 3. “Local information technology authority” means a local public office or local
10 governmental unit whose primary function is information storage, information
11 technology processing, or other information technology usage.

12 (b) For purposes of requests for access to records under sub. (1), a local
13 information technology authority that has custody of a law enforcement record for
14 the primary purpose of information storage, information technology processing, or
15 other information technology usage is not the legal custodian of the record. For such
16 purposes, the legal custodian of a law enforcement record is the authority for which
17 the record is stored, processed, or otherwise used.

18 (c) A local information technology authority that receives a request under sub.
19 (1) for access to information in a law enforcement record shall deny any portion of the
20 request that relates to information in a local law enforcement record.

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(END)