

2013 DRAFTING REQUEST

Bill

Received: **10/22/2012** Received By: **jkuesel**
Wanted: **Today** Same as LRB: **-3705**
For: **Legislative Reference Bureau 6-6778** By/Representing: **Kuesel**
May Contact: **LC Staff may inspect file.** Drafter: **jkuesel**
Subject: **Public Records** Addl. Drafters: **mduchek**
Extra Copies: **Jacketed copies to LC Staff**

Submit via email: **YES**
Requester's email: **jeffery.kuesel@legis.wisconsin.gov**
Carbon copy (CC) to: **Anne.Sappenfield@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Access to public records - various changes

Instructions:

Per 2011 LRB-0086/P1.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkuesel 12/19/2012	evinz 1/4/2013	phenry 10/29/2012	_____	srose 10/29/2012		
/P2	mduchek 2/12/2013	evinz 2/12/2013	jfrantze 2/12/2013	_____	sbasford 1/4/2013		
/P3	mduchek			_____	srose		

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	8/23/2013			_____	2/12/2013		
/1		evinz 8/23/2013	rschlue 8/23/2013	_____	sbasford 8/23/2013	rose 11/27/2013	

FE Sent For:

*None
Needed*

<END>

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*Jacket for Senate
per Anne S.
Leg. Council*

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	8/23/2013			_____	2/12/2013		
/1		evinz	rschluet	_____	sbasford		
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/P3	mduchek				srose 2/12/2013		

1/1 jkuesel 8/23/13 1 eev 8/23/13 1 eev 8/23/13 [Signature]

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/P2			rschluet 1/4/2013	_____	sbasford 1/4/2013		

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1p3 eev 2/12/13 *[Signature]* *2/12*

<END>

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For: Legislative Reference Bureau 6-6778 By/Representing: Kuesel
May Contact: Drafter: jkuesel
Subject: Public Records Addl. Drafters: mduchek

Extra Copies:

Submit via email: NO
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Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

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/P1	jkuesel 10/22/2012	evinz 10/29/2012	10/29/2012		srose 10/29/2012		


FE Sent For:

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Handwritten notes:
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/p2 evv 1/4/13
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Submit via email: NO
Requester's email:
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Access to public records - various changes

Instructions:

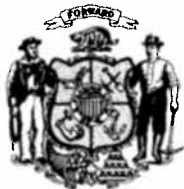
Per 2011 LRB-0086/P1.

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/P1	jkuesel/ 10/22/12	/pl eev 10/23/12	/pl eev 10/25/12	10/29 pl/RS			

FE Sent For:

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State of Wisconsin
2011-2012 LEGISLATURE
2013

- 0437/1



LRB-0080/P1

JTK...eev

(not edited in 2011)

THU 10/25

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAN
xref

PWF

gen cat

1 AN ACT ...; relating to: access to public records.?

Analysis by the Legislative Reference Bureau

This is a preliminary draft. The proposed changes are explained in the NOTES following each section.

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

725
1-2

SECTION 1. 19.32 (1) of the statutes is amended to read:

19.32 (1) "Authority" means any of the following having custody of a record: a state or local office, elected elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution, or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895 special purpose district; any court of law; the assembly or senate; a nonprofit

1 corporation which receives more than 50% of its funds from a county or a
 2 municipality, as defined in s. 59.001 (3), and which provides services related to public
 3 health or safety to the county or municipality; or a formally constituted subunit of
 4 any of the foregoing.

: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a. 158; 1997 a. 79, 94; 1999 a. 9; 2001 a. 16; 2003 a. 47; 2005 a. 387; 2007 a. 20.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has

long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts ~~implies~~ that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as "agencies." See also Section 3 below.

(tr)

implies

A.R. 2

5 SECTION 2. 19.32 (2) of the statutes is amended to read:

6 19.32 (2) "Record" means any material on which written, drawn, printed,
 7 spoken, visual or electromagnetic information is recorded or preserved, regardless
 8 of physical form or characteristics, which has been created or is being kept by an
 9 authority. "Record" includes, but is not limited to, handwritten, typed or printed
 10 pages, maps, charts, photographs, films, recordings, tapes (including computer
 11 tapes), computer printouts and, optical disks, and other electronically generated or
 12 stored material. "Record" does not include drafts, notes, preliminary computations
 13 and like materials prepared for the originator's personal use or prepared by the
 14 originator in the name of a person for whom the originator is working; materials
 15 which are purely the personal property of the custodian and have no relation to his
 16 or her office; materials to which access is limited by copyright, patent or bequest; and
 17 published materials in the possession of an authority other than a public library
 18 which are available for sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of "record" to computer tapes and printouts and substitutes a more general reference to "electronically generated or stored material" in order to explicitly capture other current and possible future formats.

^{A.R. 2}
SECTION 3. 19.32 (3m) of the statutes is created to read:

19.32 (3m) "Special purpose district" means a district, other than a state governmental unit or a county, city, village, or town, that is created to perform a particular function and whose geographic jurisdiction is limited to some portion of this state.

NOTE: Creates a definition of "special purpose district" which is used in Section 1. The definition is designed to capture all nonstate governmental districts, except counties, cities, villages, and towns, that are created to perform a particular function and whose geographic jurisdiction is limited to some portion of this state.

^x
SECTION 4. 19.33 (1) to (3) and (8) of the statutes are amended to read:

19.33 (1) An elected elective official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elected elective officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) ^C The cochairpersons of a joint committee of elected elective officials, or the designee of the cochairpersons, are the legal custodians of the records of the joint committee.

: 1981 c. 335.
(8) No elected elective official of a legislative body has a duty to act as or designate a legal custodian under sub. (4) for the records of any committee of the body unless the official is the highest ranking officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or by law.

: 1981 c. 335.
NOTE: Covers under the law a person who holds an elective office even if the person was appointed to fill a vacancy in that office.

1 SECTION 5. 19.34^x (title) of the statutes is amended to read:

2 19.34 (title) **Procedural information; time period for inspection.**

: 1981 c. 335; 2003 a. 47.

NOTE: Expands title to reflect the complete content of s. 19.34, stats.

3 SECTION 6. 19.35^x (1) (am) (intro.) of the statutes is amended to read:

4 19.35 (1) (am) (intro.) In addition to any right under par. (a), any requester who

5 is an individual or person authorized by the individual, has a right to inspect any

6 personally identifiable information *pertaining to the individual* in a record containing personally identifiable

7 information ~~pertaining to the individual~~ that is maintained by an authority and to

8 make or receive a copy of any such information. The right to inspect or copy

9 information in a record under this paragraph does not apply to any of the following:

: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual only has a right to inspect or copy the portion of the record containing personally identifiable information relating to himself or herself.

10 SECTION 7. 19.35^x (1) (b) of the statutes is amended to read:

11 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to

12 inspect a record and to make or receive a copy of a record. If a requester appears

13 personally to request a copy of a record that permits ~~photocopying~~ copying, the

14 authority having custody of the record may, at its option, permit the requester to

15 ~~photocopy~~ copy the record or provide the requester with a copy substantially as

16 readable as the original.

: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a records to apply to other forms of copying.

17 SECTION 8. 19.35^x (1) (c) of the statutes is amended to read:

18 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to

19 receive from an authority having custody of a record which is in the form of a

20 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as

1 audible as the original. The authority may instead provide a transcript of the
2 recording to the requester if he or she requests.

: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other recording formats.

3 **SECTION 9.** 19.35^X (1) (d) of the statutes is amended to read:

4 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
5 receive from an authority having custody of a record which is in the form of a video
6 tape recording a copy of the ~~tape~~ recording substantially as good as the original.

: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other formats.

7 **SECTION 10.** 19.35^X (6) of the statutes is amended to read:

8 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No ~~elected~~ elective
9 official is responsible for the record of any other ~~elected~~ elective official unless he or
10 she has possession of the record of that other official.

: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

11 **SECTION 11.** 19.36^X (7) (a) of the statutes is amended to read:

12 19.36 (7) (a) In this section, “final candidate” means each applicant for a
13 position who is seriously considered for appointment or whose name is certified for
14 appointment and whose name is submitted for final consideration to an authority for
15 appointment to any state position, except a position in the classified service, ~~or~~ to
16 any local public office; or to any appointive office or position of a local governmental
17 unit, in which an individual serves as the head of a department, agency, or division
18 of the local governmental unit. “Final candidate” includes, whenever there are at
19 least 5 candidates for an office or position, ~~each of the~~ no fewer than 5 of the
20 candidates applicants who are considered the most qualified for the office or position

1 by an authority, and whenever there are less fewer than 5 candidates for an office or
 2 position, each such candidate. Whenever an appointment is to be made from a group
 3 of more than 5 candidates, "final candidate" also includes each candidate applicant
 4 in the group.

: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27; 2001 a. 16; 2003 a. 33, 47; 2005 a. 59, 253; 2007 a. 97; 2009 a. 28.

NOTE: 1. Resolves an anomaly by extending the law governing access to records of the identities of final candidates to apply to appointive offices or positions in which an individual serves as the head of a department, agency, or division of a local governmental unit, subject to exceptions specified in current law. Currently, a requester is not entitled to access to the identities of final candidates for these offices or positions if the incumbent serves for an indefinite term, but does not serve at the pleasure of the appointing authority.

2. Specifies that when there are more than 5 candidates for an office or position who are considered the most qualified by an authority, all of the candidates are considered "final candidates" whose identities are subject to release by authority (a situation not addressed currently).

3. Standardizes word usage.

5 **SECTION 12.** ^x 19.36 (13) of the statutes is amended to read:

6 19.36 (13) FINANCIAL IDENTIFYING INFORMATION. An authority shall not provide
 7 access to personally identifiable data information that contains an individual's
 8 account or customer number with a financial institution, as defined in s. 134.97 (1)
 9 (b), including credit card numbers, debit card numbers, checking account numbers,
 10 or draft account numbers, unless specifically required by law.

: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27; 2001 a. 16; 2003 a. 33, 47; 2005 a. 59, 253; 2007 a. 97; 2009 a. 28.

NOTE: Substitutes a term defined in s. 19.62 (3), stats. for a variant of that term.

The definition applies to s. 19.36 (13) state under s. 19.32 (1)(b), state.

11 **SECTION 13.** 19.365 of the statutes is renumbered 19.70.

NOTE: Relocates a provision that does not relate to public records access, but rather to personal information, to the subchapter that relates to personal information practices.

12 (END)

INS 1-2

Section #. 19.32 (intro.) of the statutes is amended to read:

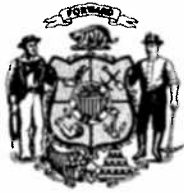
19.32 Definitions. (intro.) As used in ss. ~~19.33~~^{19.32} to 19.39:

~~History: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263,~~

~~491; 1995 a. 158; 1997 a. 79, 94; 1999 a. 9; 2001 a. 16; 2003 a. 47; 2005 a. 387; 2007 a. 20.~~

NOTE: Expands the application of s. 19.32, state's [Definitions] to apply to itself so that the definition proposed in Section 3 E "Special purpose district" will apply to s. 19.32 (1), state's [definition of "authority"].

AR 3



62

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF

Gen

1 **AN ACT**; relating to: access to public records.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. The proposed changes are explained in the NOTES following each section.

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

2 **SECTION 1.** 19.32 (intro.) of the statutes is amended to read:

3 **19.32 Definitions.** (intro.) As used in ss. 19.33 19.32 to 19.39:

NOTE: Expands the application of s. 19.32, stats. (definitions), to apply to itself so that the definition proposed in Section 4 (special purpose district) will apply to s. 19.32 (1), stats. (definition of "authority"). CS

4 **SECTION 2.** 19.32 (1) of the statutes is amended to read:

5 19.32 (1) "Authority" means any of the following having custody of a record: a
6 state or local office, elected elective official, agency, board, commission, committee,
7 council, department or public body corporate and politic created by the constitution,
8 or by any law, ordinance, rule or order; a governmental or quasi-governmental

1 corporation except for the Bradley center sports and entertainment corporation; a
 2 ~~local exposition district under subch. II of ch. 229; a long-term care district under s.~~
 3 ~~46.2895 special purpose district~~; any court of law; the assembly or senate; a nonprofit
 4 corporation which receives more than 50% of its funds from a county or a
 5 municipality, as defined in s. 59.001 (3), and which provides services related to public
 6 health or safety to the county or municipality; or a formally constituted subunit of
 7 any of the foregoing.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts implies that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as "agencies." See also Section 4 below.

Ins
2-7 * →

8 SECTION 3. 19.32 (2) of the statutes is amended to read:

9 19.32 (2) "Record" means any material on which written, drawn, printed,
 10 spoken, visual ^{or} electromagnetic information ^{is recorded or preserved, regardless} ~~is recorded or preserved, regardless~~ ^{of or on which electronically generated data}
 11 of physical form or characteristics, which has been created or is being kept by an
 12 authority. "Record" includes, but is not limited to, handwritten, typed or printed
 13 pages, maps, charts, photographs, films, recordings, tapes (including computer
 14 tapes), computer printouts and, optical disks, and ~~other electronically generated or~~ ^{any medium on which data is}
 15 ~~stored material~~. "Record" does not include drafts, notes, preliminary computations
 16 and like materials prepared for the originator's personal use or prepared by the
 17 originator in the name of a person for whom the originator is working; materials
 18 which are purely the personal property of the custodian and have no relation to his
 19 or her office; materials to which access is limited by copyright, patent or bequest; and

1 published materials in the possession of an authority other than a public library
2 which are available for sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of "record" to computer tapes and
* printouts and substitutes a more general reference to "electronically generated or stored ^{data}
material" in order to explicitly capture other current and possible future formats.

3 SECTION 4. 19.32 (3m) of the statutes is created to read:

4 19.32 (3m) "Special purpose district" means a district, other than a state
5 governmental unit or a county, city, village, or town, that is created to perform a
6 particular function and whose geographic jurisdiction is limited to some portion of
7 this state.

* NOTE: Creates a definition of "special purpose district," which is used in ^(CS) Section 2.
The definition is designed to capture all nonstate governmental districts, except counties,
cities, villages, and towns, that are created to perform a particular function and whose
geographic jurisdiction is limited to some portion of this state.

8 SECTION 5. 19.33 (1) to (3) and (8) of the statutes are amended to read:

9 19.33 (1) An elected elective official is the legal custodian of his or her records
10 and the records of his or her office, but the official may designate an employee of his
11 or her staff to act as the legal custodian.

12 (2) The chairperson of a committee of elected elective officials, or the designee
13 of the chairperson, is the legal custodian of the records of the committee.

14 (3) The cochairpersons of a joint committee of elected elective officials, or the
15 designee of the cochairpersons, are the legal custodians of the records of the joint
16 committee.

17 (8) No elected elective official of a legislative body has a duty to act as or
18 designate a legal custodian under sub. (4) for the records of any committee of the body
19 unless the official is the highest ranking officer or chief administrative officer of the
20 committee or is designated the legal custodian of the committee's records by rule or
21 by law.

NOTE: Covers under the law a person who holds an elective office even if the person was appointed to fill a vacancy in that office.

1 SECTION 6. 19.34 (title) of the statutes is amended to read: *access times and locations*

2 * 19.34 (title) **Procedural information; time period for inspection.**

NOTE: Expands title to reflect the complete content of s. 19.34, stats.

3 SECTION 7. 19.35 (1) (am) (intro.) of the statutes is amended to read:

4 19.35 (1) (am) (intro.) In addition to any right under par. (a), any requester who
5 is an individual or person authorized by the individual, has a right to inspect any
6 personally identifiable information pertaining to the individual in a record
7 containing personally identifiable information ~~pertaining to the individual~~ that is
8 maintained by an authority and to make or receive a copy of any such information.
9 The right to inspect or copy information in a record under this paragraph does not
10 apply to any of the following:

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual has a right to inspect or copy only the portion of the record containing personally identifiable information relating to himself or herself.

11 SECTION 8. 19.35 (1) (b) of the statutes is amended to read:

12 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to
13 inspect a record and to make or receive a copy of a record. If a requester appears
14 personally to request a copy of a record that permits ~~photocopying~~ copying, the
15 authority having custody of the record may, at its option, permit the requester to
16 ~~photocopy~~ copy the record or provide the requester with a copy substantially as
17 readable as the original.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.

18 SECTION 9. 19.35 (1) (c) of the statutes is amended to read:

1 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to
2 receive from an authority having custody of a record which is in the form of a
3 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as
4 audible as the original. The authority may instead provide a transcript of the
5 recording to the requester if he or she requests.

NOTE: Removes reference to "tape" to apply this paragraph to records in digital and other recording formats.

6 **SECTION 10.** 19.35 (1) (d) of the statutes is amended to read:

7 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
8 receive from an authority having custody of a record which is in the form of a video
9 ~~tape~~ recording a copy of the ~~tape~~ recording substantially as good as the original.

NOTE: Removes reference to "tape" to apply this paragraph to records in digital and other formats.

10 **SECTION 11.** 19.35 (6) of the statutes is amended to read:

11 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No elected elective
12 official is responsible for the record of any other ~~elected~~ elective official unless he or
13 she has possession of the record of that other official.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

14 **SECTION 12.** 19.36 (7) (a) of the statutes is amended to read:

15 19.36 (7) (a) In this ~~section~~, ^{SubSection} "final candidate" means each applicant for a
16 position who is seriously considered for appointment or whose name is certified for
17 appointment and whose name is submitted for final consideration to an authority for
18 appointment to any state position, except a position in the classified service, ~~or;~~ to
19 any local public office; or to any appointive office or position of a local governmental
20 unit, in which an individual serves as the head of a department, agency, or division
21 of the local governmental unit. "Final candidate" includes, whenever there are at

1) least 5 candidates for an office or position, each of the ~~no fewer than~~ 5 of the
 2 candidates applicants who are considered the most qualified for the office or position
 3 by an authority, and whenever there are less fewer than 5 candidates for an office or
 4 position, each such candidate Whenever an appointment is to be made from a group
 5 of more than 5 candidates, "final candidate" also includes each candidate applicant
 6 in the group.

NOTE: 1. Resolves an anomaly by extending the law governing access to records of the identities of final candidates to apply to appointive offices or positions in which an individual serves as the head of a department, agency, or division of a local governmental unit, subject to exceptions specified in current law. Currently, a requester is not entitled to access to the identities of final candidates for these offices or positions if the incumbent serves for an indefinite term, but does not serve at the pleasure of the appointing authority.

2. Specifies that when there are more than five candidates for an office or position who are considered the most qualified by an authority, all of the candidates are considered "final candidates" whose identities are subject to release by authority (a situation not addressed currently)

2 7. Standardizes word usage.

7 SECTION 13. 19.36 (13) of the statutes is amended to read:

8 19.36 (13) FINANCIAL IDENTIFYING INFORMATION. An authority shall not provide
 9 access to personally identifiable data information that contains an individual's
 10 account or customer number with a financial institution, as defined in s. 134.97 (1)
 11 (b), including credit card numbers, debit card numbers, checking account numbers,
 12 or draft account numbers, unless specifically required by law.

NOTE: Substitutes a term defined in s. 19.62 (5), stats., for a variant of that term. The definition applies to s. 19.36 (13), stats., under s. 19.32 (1r), stats.

13 SECTION 14. 19.365 of the statutes is renumbered 19.70.

NOTE: Relocates a provision that does not relate to public records access, but rather to personal information, to the subchapter that relates to personal information practices.

14 (END)

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SECTION 1. 19.32² (1m) of the statutes is amended to read:

19.32 (1m) "Person authorized by the individual" means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of ~~a~~ an individual who is a child, as defined in s. 48.02 (2), ² the guardian of an individual adjudicated incompetent in this state, ² the personal representative or spouse of an individual who is deceased, ² or any person authorized, in writing, by the an individual to exercise the rights granted under this section act on his or her behalf.

History: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a. 158; 1997 a. 79, 94; 1999 a. 9; 2001 a. 16; 2003 a. 47; 2005 a. 387; 2007 a. 20.

***NOTE: Amends this definition to standardize word usage. Clarifies that a "person authorized by the individual" is not limited to acting in situations involving a stated "right." Also removes erroneous reference to "this section" (the definition section), and replaces it with a more general reference to an individual acting on behalf of another individual.

④

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: December 7, 2012

To: Mark Rinchart
Legislative Liaison

From: Mary Burke *MEB*
Assistant Attorney General

Subject: Comments on LRB-0437/P1

Legislative Reference Bureau drafter Jeff Kuesel has asked for comments on LRB-0437/P1 (copy attached). This draft involves technical corrections and updates to the Wisconsin public records law, intended to be non-controversial. My comments are as follows.

Please let me know if you have questions or would like me to convey these comments to Jeff. Also, when he contacted me about reviewing this draft, Jeff also indicated that he would welcome other suggestions for additional technical and non-controversial changes that could be included in the same bill. Please let me know if I can be of further assistance with other possible changes or other matters related to this bill.

✓ **Section 1:** OK, the proposed change makes sense.

self **Section 2:** OK. Additional clarity could be accomplished by creating a definition of "elective official," perhaps by cross-reference to the Wis. Stat. § 19.42(5m) definition of "elective office," but that is not essential. "Elective official" appears elsewhere in the statutes and does not appear to be defined.

✓ **Section 3:** OK, this change will be helpful in situations where the requester holds a durable power of attorney for the individual to whom the records pertain—a situation not currently addressed by the public records law.

OK **Section 4:** Updating the scope of electronic materials encompassed in the definition of "record," as in this proposed change, will be helpful. The drafter's note indicates that more general language is used to capture both current and future formats. Even broader language like "electronically stored or generated data"—instead of "electronically generated data"—might better accomplish that objective.

OK **Section 5:** OK, the proposed change makes sense.

OK **Section 6:** OK, the proposed change makes sense and relates to the change proposed in Section 2.

OK **Section 7:** OK, the proposed change makes sense and will be helpful to readers who are not familiar with the public records law.

OK **Section 8:** Wis. Stat. § 19.35(1)(am) provides an enhanced right of access to individuals requesting records containing personally identifiable information about themselves. When this subsection applies, a requesting individual may be able to obtain some records not available to members of the general public under the usual Wis. Stat. § 19.35(1)(a) access provisions. There is no balancing test under § 19.35(1)(am), although the legislature has established some specific exceptions to the enhanced access provided by this subsection.

This clarification will help readers understand what portion of records containing personally identifying information pertaining to an individual who is requesting records about himself or herself must be provided to that individual. The purpose of providing an individual greater access to records under § 19.35(1)(am) is so that the individual can determine what information is being maintained and whether that information is accurate. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 55, 284 Wis. 2d 162, 699 N.W.2d 551. The proposed clarification is consistent with the intended purpose of § 19.35(1)(am).

OK **Section 9:** This is a sensible terminology update acknowledging evolution of copying technology (now including cell phones, portable scanners, tablet devices, etc.). In the one published decision on this topic, the court of appeals held that a requester cannot select his or her own equipment to copy requested records; instead, the authority may decide whether or not to allow a requester to use his or her own equipment to make copies of records. *Grebner v. Schiebel*, 2001 WI App 17, ¶¶ 1, 9, 12-13, 240 Wis. 2d 551, 624 N.W.2d 892 (2000) (portable photocopy machine). The proposed legislative change is consistent with *Grebner*. Allowing an authority to decide whether a requester may make copies, on any device, lets the authority manage use of the original records so that they are not damaged, mixed up, etc., by a requester using his or her own device to make copies.

OK **Section 10:** This update of statutory language makes sense.

OK **Section 11:** This update of statutory language makes sense.

OK **Section 12:** OK, the proposed change makes sense and relates to the change proposed in Section 2.

Section 13: Wis. Stat. § 19.36(7) provides a process for withholding the identities of certain applicants for public positions.

Subsection 19.36(7)(b) establishes the general rule: Applicants may indicate in writing that they do not wish their identities to be revealed. If an applicant so indicates, the authority

then may not provide access to any record related to that application that might reveal the applicant's identity—unless the applicant is certified for appointment to a position in the state classified service or is a “final candidate.”

Subsection 19.36(7)(a) defines “final candidate,” for purposes of applying the § 19.36(7)(b) disclosure prohibition. Subsection 19.36(7)(a) is very confusing. A previous attorney general opined that “Section 19.36(7) is hardly a model of clarity.” 81 Op. Att’y Gen. 37, 38 (1993). Much of the confusion involves how the many clauses strung together in § 19.37(7)(a) are supposed to be grouped and related.

Clarifying the scope of § 19.36(7)(a), as attempted in LRB-0437/P1, is a great idea. Premature or unwarranted disclosure of the identities of applicants can have serious consequences for both individual applicants and the authorities to which they have applied.

The proposed changes to § 19.36(7)(a) do improve upon comprehensibility of the current statutory language. They also appear to be consistent with how our office has interpreted § 19.36(7)(a). *See, e.g.*, Letter from Attorney General Peggy A. Lautenschlager to Mark Baker (July 12, 2004) (copy attached).

Additional reorganization of the statutory language with some subdivisions, numbering, and punctuation would further improve comprehensibility. Incorporating the changes already proposed in LRB-0437/P1, this could look like:

19.36 (7) (a) I. In this ~~section~~ subsection, “final candidate” means each applicant for a position who:

~~(A)~~ is seriously considered for appointment or whose name is certified for appointment; and

~~(B)~~ whose name is submitted for final consideration to an authority for appointment to:

1. Any state position, except a position in the classified service; ~~or to;~~
2. Any local public office; or to
3. 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.

d. “Final candidate” includes;

(A) ~~Whenever~~ there are at least 5 ~~candidates~~ applicants for an office or position, each of the 5 ~~candidates~~ applicants who are considered the most qualified for the office or position by an authority, ~~and,~~

Kept whenever for consistency
(B) If an appointment is to be made from a group of more than 5 applicants considered the most qualified for the office or position by the authority, "~~final candidate~~ includes each applicant in ~~the~~ group considered most qualified." *that*

already in (intro)
(C) ~~Whenever~~ there are less ~~fewer~~ than 5 ~~candidates~~ applicants for an office or position, each such ~~candidate~~ applicant. ~~Whenever an appointment is to be made from a group of more than 5 candidates, "final candidate" also includes each such candidate in the group.~~

☞ **Section 14:** OK, this clarifying language makes sense.

Section 15: Current 19.365 creates a right for an individual or person authorized by the individual to challenge the accuracy of a record containing personally identifiable information about the individual. Unlike the rest of the public records law, this section does not involve access to or disclosure of records. Therefore, it makes sense to relocate this section to the subchapter of Ch. 19 that concerns personal information practices.

Attachment

c: Kevin Potter
Charlotte Gibson



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

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Daniel P. Bach
Deputy Attorney General

July 12, 2004

Mr. Mark Baker
Publisher
The Chippewa Herald
Post Office Box 69
Chippewa Falls, WI 54729-0069

Dear Mr. Baker:

Thank you for your letter of January 21, 2004, about The Chippewa Herald's ability to obtain the names and addresses of final candidates for superintendent of the Chippewa Falls School District (the "School District") pursuant to section 19.36(7) of the Wisconsin Statutes. I apologize for the delay in responding to your letter.

Your letter describes the following circumstances: a School District consultant, without school board participation, narrowed the field of superintendent applicants to eight. Four-person teams interviewed those eight applicants on January 7 and 8, 2004. The interview teams included school board members, faculty and citizens. On January 8, the school board announced the names of two finalists for the superintendent position. On January 13, one of your reporters filed a written request for the School District to produce the names and addresses of the final candidates for inspection and copying pursuant to section 19.36(7). On January 20, the School District responded by producing the names and addresses of the two previously announced finalists.

Your letter notes the applicability of section 19.36(7), which provides as follows:

(7) IDENTITIES OF APPLICANTS FOR PUBLIC POSITIONS. (a) In this section, "final candidate" means each applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any state position, except a position in the classified service, or to any local public office. . . . "Final candidate" includes, whenever there are at least 5 candidates for an office of position, each of the 5 candidates who are considered most qualified for the office of position by an authority, and whenever there are less than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a group of more than 5 candidates, "final candidate" also includes each candidate in the group.

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(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for appointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

Pursuant to these statutory provisions, I agree with your view that the names and addresses of the eight candidates identified by the School District consultant should have been disclosed in response to your reporter's public records request. Based on the information you have provided, however, I see no deliberate non-compliance by the School District with your reporter's request or section 19.36(7) requirements. "Section 19.36(7) is hardly a model of clarity," as one of my predecessors correctly observed. 81 Op. Att'y Gen. 37, 38 (1993).

Concluding that "applicant" and "candidate" are synonymous for section 19.36(7) purposes, my predecessor identified two important principles that also guide my analysis of your inquiry. First, my predecessor's conclusion resulted in the greatest number of candidates being identified as final candidates. That result is consistent with the legislative mandate in section 19.31 that the public records statutes "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." Second, section 19.36(7) must be narrowly construed because it is a partial exception to the public records law. 81 Op. Att'y Gen at 38, citing *Hathaway v. Green Bay School Dist.*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984).

I also am mindful of the recent instruction by our Wisconsin Supreme Court that "the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Ralph A. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44, ___ Wis. 2d ___, ___ N.W.2d ___. Statutory interpretation begins with the statutory language, given its common, ordinary and accepted meaning. *Kalal*, 2004 WI 58, ¶ 45. Both context and statutory structure are important to meaning. "Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Kalal*, 2004 WI 58, ¶ 46.

Section 19.36(7)(b) is clear enough. Records containing the names of final candidates are subject to disclosure under the public records law.

What is not so clear is who constitutes a final candidate, as defined in section 19.36(7)(a): "[E]ach applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for

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appointment to any state position, except a position in the classified service, or to any local public office[.]”

I believe that any question raised by application of section 19.26(7) to the circumstances you describe ultimately is answered by the presumption of openness mandated in section 19.31, the language of the remaining sentences of section 19.36(7)(a), and the related provisions of chapter 230 of the Wisconsin Statutes.

Section 19.31 mandates access to the greatest possible information, or, under these circumstances, the largest possible number of final candidate names and addresses.

The second sentence of section 19.36(7)(a) sets five as the minimum number of final candidates whenever there are at least five candidates for a position, and designates all candidates as “final candidates” when there are less than five candidates for a position. We know, from my predecessor’s opinion, that “applicant” and “candidate” are synonymous. 81 Op. Att’y Gen. at 38. This second sentence is not otherwise ambiguous, and the Legislature is presumed to choose statutory terms carefully and precisely to convey its intended meaning. *Ball v. District No. 4, Area Bd.*, 117 Wis. 2d 529, 539, 345 N.W.2d 389 (1984). Because the number of applicants exceeded eight, the second sentence of section 19.36(7)(a) established five as the minimum number of final candidates for the Chippewa Falls School District superintendent position.

However, the third sentence of section 19.36(7)(a) provides that whenever an appointment is to be made from a group of more than five candidates, “final candidate” includes each candidate in that group. The group of two “finalists” announced by the school board is too small to serve as the group of at least five final candidates required by the second sentence of section 19.36(7)(b). The next largest group of candidates is the group of eight identified by the School District consultant to be considered in the group interview process. The third sentence of section 19.36(7)(a) means that all eight of those candidates were “final candidates” because the superintendent appointment was to be made from that group.

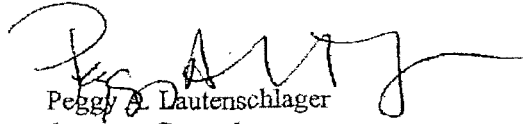
Finally, chapter 230 is the State Employment Relations chapter of the Wisconsin Statutes. In relevant part, it provides that “[u]nless the name of an applicant is certified under s. 230.25, the secretary [of employment relations] and the administrator [of the division of merit recruitment and selection] shall keep records of the identity of an applicant for a position closed to the public[.]” Sec. 230.13(2), Wis. Stats. Section 230.25(1), in turn, requires the administrator to certify for appointment to a vacancy a list of the names at the top of the register of persons eligible for that type of employment. And, “[i]n determining the number of names to certify, the administrator shall use statistical methods and personnel management principles that are designed to *maximize* the number of certified names that are appropriate for filling the specific position vacancy.” Read together, sections 230.13(2) and 230.25(1) operate to maximize the number of applicant names that can be made public pursuant to the

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section 230.13(2) exception to the general rule of applicant confidentiality. Multiple statutes that address the same subject should be read so that each statute that relates to the same subject matter should be read, construed and applied together so the Legislature's intentions can be gathered from both statutes. *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (Ct. App. 1996). Sections 19.36(7)(a), 230.13(2) and 230.25(1) should be read in such a manner because all address disclosure of the names of persons certified eligible for appointment. Reading section 19.36(7)(a) with sections 230.13(2) and 230.25(1) supports maximizing the number of applicant names to be made public: eight rather than two in the Chippewa Falls School District superintendent search.

This result—disclosing the eight superintendent candidates who participated in the January 2004 team interviews—complies with the narrow construction mandated for partial exceptions to the public records law. 81 Op. Att’y Gen at 38; *Hathaway*, 116 Wis. 2d at 397. The number of final candidates determined by application of section 19.36(7) in other circumstances will depend on the particular facts of those circumstances.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

PAL:MEB:df