



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #301

### **Exceptions to the Open Records Law (Wisconsin Economic Development Corporation/ Forward Wisconsin Development Authority)**

[LFB 2015-17 Budget Summary: Page 167, #5]

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#### **CURRENT LAW**

Records of the Wisconsin Economic Development Corporation (WEDC) are subject to the state open records law, except for those that pertain to pending grants, loans, or economic development projects that, in the opinion of WEDC, must remain confidential to protect the competitive nature of the project.

#### **GOVERNOR**

Under the budget bill introduced by the Governor, WEDC would be merged with the Wisconsin Housing and Economic Development Authority to create the Forward Wisconsin Development Authority (FWDA), effective January 1, 2016. However, on May 8, 2015, the Governor announced that he was requesting that provisions associated with the proposed merger be removed from the budget bill. The remainder of this paper describes modifications to WEDC's documents and records under the state open records law, instead of FWDA's.

The budget bill would specify that documents and records of WEDC are considered public records under the state open records law, except: (a) records or portions of records consisting of personal or financial information provided by a person seeking a grant, loan, tax credit, or other assistance from WEDC; (b) information that would jeopardize an applicant's competitive position for a grant, loan, or project; or (c) records consisting of information on the In Force Network or other similar customer relationship management system (CRM) maintained by WEDC, unless the information is published to the In Force Network or other system by the

Corporation or another economic development organization. According to WEDC, the In Force Network is an information-sharing service on which private entities can post or share certain information.

## **DISCUSSION POINTS**

1. As noted, all records of WEDC are currently considered public records, with certain exceptions. The bill would create two new exemptions from the open records law that do not currently apply to WEDC: (a) records containing financial or personal information provided by an applicant; and (b) records consisting of information on the In Force Network, or other similar customer relationship management system, maintained by WEDC, unless the information is published to the In Force Network or other system by the Corporation or another economic development organization.

2. According to WEDC, the In Force Network is a CRM which provides a platform for the Corporation and economic development users throughout the state to share information and manage business relationships. The Network allows economic developers to track business contacts, relationships, and development opportunities and allows users to run reports on completed, ongoing, and future projects. Users of the Network are able to communicate and collaborate with other economic and development partners throughout the state, including the eleven Workforce Development Boards.

3. WEDC states that proprietary information of users on the In Force Network is confidential if the user is working with a company on a project, unless the information is shared with a partner or a WEDC employee. All state agencies and authorities may withhold records or documents from public access by applying a balancing test to determine if public interests favoring secrecy outweighs those favoring disclosure. The Corporation has raised concerns that, while its current policies retain confidentiality for information stored on the In Force Network, its current statutory exemption from the open records law does not include an exemption for personal or financial information stored by its users on the network. In response to programmatic audits performed by the Legislative Audit Bureau, WEDC collects detailed data from companies that receive awards, including personnel and payroll data. WEDC states that certain businesses that would otherwise apply for grants, loans, and tax credits offered by the Corporation do not feel comfortable with the possibility of subjecting their company's records, or their personal finances, to the state open records law and choose not to participate in economic development programs offered by the Corporation. The administration has requested the proposed statutory exemption from the open records law for information stored on the In Force Network to address these concerns.

4. On April 13, 2015, the administration sent a letter to the co-chairs of the Joint Committee on Finance requesting a number of modifications to the bill to address drafting errors and to clarify the Governor's intent. In that letter, the administration requested a modification to clarify the Governor's intent by deleting the recommended exemption from the open records law for records consisting of information on the In Force Network, or other similar CRM maintained by WEDC, unless the information is published to the In Force Network or other system by the Corporation or another economic development organization. Instead, the administration requested

an exemption from the open records law for all information on the In Force Network, or other CRM maintained by the Corporation, that is stored to that network/system, including any state authority or state agency, federal or local governmental unit, or economic development organization. Additionally the person storing information to the network/system would remain the custodian of the information while it is in the custody of WEDC. Access to information stored on the network/system would be determined by the custodian of that information in accordance with state law.

5. The Committee could choose to modify the bill, as recommended by the administration, to more accurately reflect the Governor's intent. Under this alternative, a person would remain the custodian of any information that the person stored on the In Force Network or similar CRM maintained by WEDC and anything stored by that person on the network/system would become exempt from the state open records law. It is unclear to what extent information stored by a person on the network/system, and what types of information, might become exempt from public inspection under this provision as compared to current law.

6. However, it could be argued that a blanket exemption for all information stored to a CRM network/system maintained by WEDC could be interpreted in an overly broad manner. While it is reasonable that a grant, loan, or tax credit recipient would not want to make its company's payroll records or personal finances subject to the state open records law and available for examination by competing companies, it is unclear to what extent information currently subject to the state open records law might be stored by a business or person on the In Force Network and, under the provision, become exempt from public inspection. The Committee could choose to delete the recommended exemption for information published to the In Force Network or similar CRM. Instead, the Committee could specify that any personally identifiable information or company financial records provided by a person seeking or receiving a grant, loan, or other assistance from WEDC be exempt from the state open records law. Under this alternative, an exemption would apply to the types of information that WEDC has identified as desirable to become exempt from the state open records law, but would not provide a blanket exemption for any information stored by a person on a CRM system maintained by WEDC. In addition, this alternative would maintain the current law provision, which was included in the Governor's recommendation, that exempts from the state open records law any record relating to a pending grant or economic development project that, in the opinion of WEDC, must remain confidential to protect the competitive nature of the grant, loan, or project.

## **ALTERNATIVES**

1. Apply the Governor's recommended changes to exemptions from the open records law to WEDC, rather than FWDA. Delete the proposed exemption from the state open records law that documents and records consisting of information on the In Force Network, or other similar customer relationship management system maintained by WEDC, unless the information was published to the In Force Network or other system/network maintained by WEDC, or another economic development organization. Instead, require WEDC to withhold from public access all information on the In Force Network, or other CRM maintained by WEDC, that was stored to that network/system by a person other than the Corporation, including any state authority or state

agency, federal or local governmental unit, or economic development organization. Specify that the person storing information to the In Force Network or other CRM remains the custodian of that information while it is in the custody of WEDC and public access to that information must be determined by that person in accordance with state law.

2. Specify that an exemption from the state open records law for documents and records of WEDC be provided for records: (a) relating to pending grants or economic development projects that, in the opinion of WEDC, must remain confidential to protect the competitive nature of the grant, loan, or project; and (b) consisting of personally identifiable or company financial information provided by a person seeking or receiving a grant, loan, or other assistance from WEDC. Under this alternative, the proposed exemption from the open records law for records maintained on the In Force Network or other CRM maintained by WEDC would be deleted from the bill.

3. Delete provisions. Restore WEDC's current law provision that provides an exemption from the state open records law for records that pertain to pending grants, loans, or economic development projects that, in the opinion of WEDC, must remain confidential to protect the competitive nature of the project.

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