OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

WISCONSIN

REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

Open Government Guide

Open Records and Meetings Laws in

WISCONSIN

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Previously Titled
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press
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Production of the sixth edition of this compendium was possible
due to the generous financial contributions of:
The Stanton Foundation

ISBN: 1-58078-249-3

Contents

Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as Tapping Officials' Secrets — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words supra or infra to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

The Development of Public Access Law in Wisconsin

The very first Wisconsin statutes adopted after the organization of Wisconsin as a state provided for public access to the meetings and records of county government. Wis. Rev. Stat. Ch. 10, §§ 29, 37,137 (1849). From that early starting point, the Wisconsin tradition of full public access to the affairs of government has grown steadily.

The original statute requiring county constitutional officers to have their records open for examination has survived virtually unchanged. Compare Wis. Rev. Stat. Ch. 10, § 137 (1849) with Wis. Stat. § 59.20(3) (2003-04). The policy of public access to records was extended to all state, county, city, town, village, school district and other municipality or district records by Wis. Laws Ch. 178 (1917). The Wisconsin Supreme Court interpreted this enactment as a codification of the common law. *International Union, UAW v. Gooding*, 251 Wis. 362, 372-73, 29 N.W.2d 730, 735-36 (1947). At the same time, however, the court questioned the "mere curiosity" restriction on common law access, and that doctrine has never become part of the Wisconsin common law of public records. The 1917 law remained essentially unchanged until 1981, when the legislature adopted the present Open Records Law. Wis. Laws Ch. 135 (1981). This enactment expressly preserved "[s]ubstantive common law principles construing the right to inspect, copy or receive copies of records." Wis. Stat. § 19.35 (1)(a) (2003-04).

Until 1959, a hodgepodge of statutes relating to various branches of government granted public access to some meetings. For example, in addition to the original 1849 statute protecting access to county meetings, an 1889 law required open meetings for other municipalities. Wis. Laws Ch. 326 (1889). This law became the foundation for the present comprehensive requirement of open meetings in 1959. Wis. Laws Ch. 289 (1959). The legislature substantially revised the 1959 act in 1973, Wis. Laws Ch. 297 (1973), and made minor revisions in 1975, Wis. Laws Ch. 426 (1975). As subsequently construed, the 1975 amendments served to broaden the scope of the law. *State ex rel. Newspapers Inc. v. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154, 163 (1987).

In adopting the respective Open Meetings and Open Records laws, the legislature forcefully declared the state's general policies concerning openness in government. Section 19.31 of the Wisconsin Statutes (2003-04) provides:

> In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, §§ 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

Section 19.81(1) of the Wisconsin Statutes (2003-04) provides:

> In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

The Wisconsin Supreme Court recently noted the state's long tradition of open government: "If Wisconsin were not known as the Dairy State it could be known, and rightfully so, as the Sunshine State. All branches of Wisconsin government have, over many years, kept a strong commitment to transparent government." *Schill v. Wisconsin Rapids School Dist.*, 2010 WI 86, ¶ 1, 327 Wis. 2d 572, 786 N.W.2d 177.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

"[A]ny requester has a right to inspect any record." Wis. Stat. § 19.35(1)(a) (2003-04) A "requester" is generally any person who requests access to a record, but "committed or incarcerated" persons face certain restrictions on their access. *Id.*, § 19.32(3). A person is not excluded from "requester" status because that person happens to be in litigation with the governmental body to which a request is addressed. *See Cavey v. Walrath*, 229 Wis. 2d 105, 109, 598 N.W.2d 240, 243 (Wis. Ct. App. 1999). The reference to persons "committed" was added to exclude people involuntarily committed to mental institutions after a court held that such people were not excluded as "incarcerated." *See Klein v. Wisconsin Resource Center*, 218 Wis. 2d 487, 492-93, 582 N.W.2d 44, 46 (Wis. Ct. App. 1998) ("when the legislature amended the open records law to prevent incarcerated persons from obtaining these types of records, it failed to include those individuals committed pursuant to ch. 980, Stats."). A requester who is an individual (or the representative of an individual) has certain rights, beyond those granted to the general public, to inspect any record "containing personally identifiable information pertaining to the individual." Wis. Stat. § 19.35(1)(am); *Hempel v. City of Baraboo*, 2005 WI 120 ¶33, 284 Wis. 2d 162, 699 N.W.2d 551, 561 ("the right of inspection under paragraph (am) is *in addition to* any right under paragraph (a)" and within the narrow scope of matter "containing personally identifiable information pertaining to the individual" "is more unqualified than a right under paragraph (a)") (emphasis in original).

An individual may inspect or copy a record containing information pertaining to that individual, notwithstanding that other persons may not, unless the information was collected in connection with a complaint, investigation or enforcement proceeding, or would endanger an individual's life or safety, identify a confidential informant, endanger the safety of any state correctional institution, or compromise the rehabilitation of a person in the department of corrections. Wis. Stat. §§ 19.35(1)(am), 19.35(4)(c).

2. Purpose of request.

"Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling . . . to state the purpose of the request." Wis. Stat. § 19.35(1)(i); *but see Hempel v. City of Baraboo*, 2005 WI 120 ¶ 66, 284 Wis. 2d 162, 599 N.W.2d 551, 568 ("When performing a balancing test, however, a records custodian inevitably must evaluate context to some degree," including a requester's motivation in seeking the documents). A person seeking the greater access rights the law provides to the subject of a government record must, of course, identify herself to the record custodian. *See* Wis. Stat. § 19.35(1)(am).

3. Use of records.

"[A] requester shall comply with any regulations or restrictions upon . . . use of information which are specifically prescribed by law." Wis. Stat. § 19.35(1)(j).

B. Whose records are and are not subject to the act?

The records of all of the following government authorities are subject to the act:

> [S]tate or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district . . .; a long-term care district . . .; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in § 59.001(3), and which provides services related to public health or safety to the county or municipality; . . . or a formally constituted subunit of any of the foregoing.

Wis. Stat. § 19.32(1).

The records are subject to inspection whether they are kept by the authority itself or by one of its employees. *See State ex rel. Blum v. Board of Educ., School Dist. of Johnson Creek*, 209 Wis. 2d 377, 382, 565 N.W.2d 140, 142-43 (Wis. Ct. App. 1997) ("since an "authority," such as the Board, must act through its officers and employees, '[d]ocuments which otherwise fit the definition of 'records' are 'kept' by an authority whenever they are in the possession of an officer or employee who falls under the supervision of the 'authority." . . . A public body may not avoid the public access mandate of Chapter 19, Stats., 'by delegating both [a] record's creation and custody to an agent.'"). The records which county constitutional officers are required to keep in their offices, but only those records, are also subject to inspection under Wis. Stat. § 59.20(3). *State ex rel. Schultz v. Bruendl*, 168 Wis. 2d 101, 108-09, 483 N.W.2d 238, 240 (Wis. Ct. App. 1992).

1. Executive branch.

Executive branch records are not exempt.

2. Legislative bodies.

Legislative records are not exempt.

3. Courts.

Trial court records are subject to inspection under Wis. Stat. § 59.20(3) (formerly § 59.14), *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 334 N.W.2d 252 (1983), as well as the general open records law. *C.L. v. Edson*, 140 Wis. 2d 168, 409 N.W.2d 417 (Wis. Ct. App. 1987). Appellate judicial records are not exempt.

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

A nonprofit legal aid society providing guardian ad litem services and receiving more than 50 percent of its funds from a county is subject to the Open Records law. *Cavey v. Walrath*, 229 N.W.2d 105, 106, 598 N.W.2d 240, 242 (Wis. Ct. App. 1999). Nongovernmental records produced and collected under a governmental contract are covered. Wis. Stat. § 19.36(3); *Journal/Sentinel Inc. v. Sch. Bd. of Shorewood*, 186 Wis. 2d 443, 453, 521 N.W.2d 165, 170 (Wis. Ct. App. 1994). *But see Machotka v. Village of West Salem*, 233 Wis. 2d 106, 112, 607 N.W.2d 319, 322 (Wis. Ct. App. 2000) (upholding denial of access to municipal bond underwriter's records identifying purchasers of bonds) ("Here, however, Baird did not contract to perform any duty for the Village other than to underwrite the bond issue. And its only obligation under that agreement was to purchase the bonds. Anything beyond that—such as Baird's eventual sale of the bonds to others—was undertaken for Baird's own purposes and its own benefit, not the Village's.")

b. Bodies whose members include governmental officials.

Nongovernmental groups' records are not covered per se, but their records in the hands of a governmental official who has those records as part of her official duties are included.

5. Multi-state or regional bodies.

The records of these bodies are not specifically addressed, but would certainly come under the Open Records law while within the possession, custody or control of a government official as part of his official duties.

6. Advisory boards and commissions, quasi-governmental entities.

Quasi-governmental entities' records are included, as are officially designated advisory commissions, *cf. Outagamie County v. Smith*, 38 Wis. 2d 24, 155 N.W.2d 639 (1968) (meetings of same) but unofficial boards and commissions are not, subject to (5). A private corporation

that performs government functions may be subject to the Open Records law as a quasi-governmental corporation, based on the factors set forth in *State v. Beaver Dam Area Development Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295.

7. Others.

Appointed bodies are included. A nonprofit humane society keeping records of dog impoundments pursuant to a delegated statutory duty is required to make those records public. *State ex rel. Schultz v. Wellens*, 208 Wis. 2d 574, 579, 561 N.W.2d 775, 778 (Wis. Ct. App. 1997) ("it would be ironic to construe the open records law to preclude public access to statutorily designated "public record[s]" of a society designated by a county board to impound and dispose of dogs.").

C. What records are and are not subject to the act?

1. What kind of records are covered?

Essentially all information in the hands of the agencies and officers described above is subject to inspection. Section 19.21 of the Open Records law describes the reach of a public official's custody of public records as follows:

> Each and every officer of the state, or of any . . . municipality or district, is the legal custodian of and shall safely keep and preserve all property and things . . . which are in the lawful possession or control of the officer . . . or to the possession or control of which the officer . . . may be lawfully entitled, as such officer[].

Wis. Stat. § 19.21(1). An officer's custody of records is not limited to records the officer is required by law to maintain, but extends to all records the officer actually maintains in his official capacity. *Hathaway v. Green Bay Joint School District No. 1*, 116 Wis. 2d 388, 393-94, 342 N.W.2d 682, 685 (1984). The records subject to inspection and copying under the Open Records law are defined as follows:

> "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, . . . which has been created or is being kept by an authority.

Wis. Stat. § 19.32(2). *See Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W.2d 699 (1996) (private telephone records obtained by subpoena are "records" subject to the Open Records law while they remain in the custody of the district attorney). On the other hand, "drafts and notes . . . prepared for the originator's personal use" are not "records" within the Open Records law. Wis. Stat. § 19.32(2); *State v. Pankin*, 217 Wis. 2d 200, 210, 579 N.W.2d 52 (Wis. Ct. App.) (judge's personal notes compiled in connection with sentencing and placed in court file are not subject to inspection), *review denied*, 217 Wis. 2d 522, 580 N.W.2d 691 (1998). An authority cannot withhold an otherwise final document from inspection simply by labeling it as a "draft," however. *Fox v. Bock*, 149 Wis. 2d 403, 417, 438 N.W.2d 589 (Wis. Ct. App. 1989).

2. What physical form of records are covered?

The statutory term "record" includes all such material, "regardless of physical form or characteristics," including but not limited to "handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks." Wis. Stat. § 19.32(2). "[A]s modern society rapidly adds to its sophisticated methods of data collection, it inevitably filters 'the human mouth, tongue, [and] vocal cords' through computer systems. A potent open records law must remain open to technological advances so that its statutory terms remain true to the law's intent." *State ex rel. Milwaukee Police Ass'n v. Jones*, 237 Wis. 2d 840, 852, 615 N.W.2d 190, 196 (Wis. Ct. App. 2000) (holding that police department must make digital audio tape of 911 call available for inspection and copying, and that producing analog tape alone is not sufficient compliance with request).

3. Are certain records available for inspection but not copying?

All records can be copied or otherwise reproduced, unless the form of the record does not permit. Wis. Stat. §§ 19.35(1)(c)-(f).

D. Fee provisions or practices.

1. Levels or limitations on fees.

An authority may impose a fee for the actual, necessary and direct costs of reproduction and transcription or photographing a record unless a fee is otherwise provided by law or authorized to be provided by law. Wis. Stat. § 19.35(3)(a)(b).

If the person wanting a copy of a record appears in person the authority has the option of requiring the person to make a copy or providing the person with a copy. Wis. Stat. § 19.35(1)(b). But this option is not available when the requester submits the request by mail. *State ex rel. Borzych v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Wis. Ct. App. 1996).

2. Particular fee specifications or provisions.

a. Search.

A search fee may be imposed if the actual, necessary and direct cost of locating the record exceeds $50, unless otherwise provided or authorized to be prescribed by law. Wis. Stat. § 19.35(3)(c); *Osborn v. Board of Regents*, 2002 WI 83 ¶46, 254 Wis. 2d 266, 303-04, 647 N.W.2d 158, 176.

b. Duplication.

Fees can in general be imposed for the "actual, necessary and direct costs of reproduction." Wis. Stat. § 19.35(3)(a); *Osborn*, 2002 WI 83 ¶46, 254 Wis. 2d at 303-04, 647 N.W.2d at 176. If the record is produced by a contractor on behalf of a governmental authority, the contractor's fee may not exceed the "actual, necessary and direct costs of reproduction," unless otherwise provided by law. Wis. Stat. § 19.35(3)(g).

c. Other.

An authority may impose a few upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester. Wis. Stat. § 19.35(3)(d).

3. Provisions for fee waivers.

An authority may waive fees where a waiver or reduction of the fee is in the public interest. Wis. Stat. § 19.35(3)(e).

4. Requirements or prohibitions regarding advance payment.

Prepayment of fees may be required if the total amount of the fee will exceed $5. Wis. Stat. § 19.35(3)(f). When the fees are below this amount, the custodian does not have the option either to request prepayment or to require the requester to come to the custodian's office to obtain a copy. *State ex rel. Borzych v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Wis. Ct. App. 1996).

5. Have agencies imposed prohibitive fees to discourage requesters?

Wisconsin has not addressed this issue.

E. Who enforces the act?

"Any person can request advice from the attorney general as to the applicability of [the records act] under any circumstances." Wis. Stat. § 19.39. The attorney general has enforcement authority under Wis. Stat. § 19.37(1)(b), along with the district attorney for the county where the record is found, upon written request by the requester. However, this authority is rarely exercised because the Open Records law authorizes requesters to bring their own enforcement actions under Wis. Stat. § 19.37(1)(a) and recover damages, reasonable attorney's fees and actual costs if they prevail in whole or in substantial part under Wis. Stat. § 19.37(2)(a).

F. Are there sanctions for noncompliance?

A records custodian who "arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required

to forfeit not more than $1,000" in an action brought by the attorney general or a district attorney. Wis. Stat. § 19.37(4). Punitive damages may be awarded in an action brought by a requester, if the court finds the authority has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees. Wis. Stat. § 19.37(3).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Wisconsin is basically a common-law state with a statutory presumption that almost all government records are public and statutory procedures. As declared by the Wisconsin Supreme Court, this requires that the presumed public interest in inspection must be balanced against the asserted public interest in withholding inspection in the specific case:

> Thus the right to inspect public documents and records at common law is not absolute. There may be situations where the harm done to the public interest may outweigh the right of a member of the public to have access to particular public records or documents. Thus, the one must be balanced against the other in determining whether to permit inspection.

State ex rel. Youmans v. Owens, 28 Wis. 2d 672, 681, 137 N.W.2d 470, 474 (1965), *modified on reh'g*, 28 Wis. 2d 672, 139 N.W.2d 241 (1966). On the other hand, "[i]f the information requested is covered by an exempting statute that does not itself require a balancing of public interests, . . . there is no need for a custodian to conduct such a balancing. . . . The legislature has presumably already weighed the competing public interests and the custodian may or may not be aware of the legislature's rationale for the exempting statute." *State ex rel. Savinski v. Kimble*, 221 Wis. 2d 833, 840, 586 N.W.2d 36, 39 (Wis. Ct. App. 1998). There are, as noted in II.B., numerous specific statutory exceptions to the presumption of public access and general balancing test.

Examples of records opened to public inspection under the balancing test are:

(1)Statements taken in the course of a closed investigation into alleged, but not found, police misconduct were opened for public inspection on the ground that:

> In the instant situation the public interest to be served by permitting inspection is to inform the public whether defendant mayor has been derelict in his duty in not instigating disciplinary proceedings against policemen because of wrongful conduct disclosed in the report. If the report contains statements of persons having first-hand knowledge, which disclose police misconduct, the fact that reputations may be damaged would not outweigh the benefit to the public interest in obtaining inspection. On the other hand statements based upon hearsay or suspicion, or inconclusive in nature, would be of small public benefit if made public, and might do great harm to reputations.

State ex rel. Youmans, 28 Wis. 2d at 685, 137 N.W.2d at 476; *but see Hempel v. City of Baraboo*, 2005 WI 120 ¶¶69-78, 284 Wis. 2d 162, 699 N.W.2d 551, 568-70 (in sexual harassment investigation of police officer in which city had released substantial information about the nature of the allegations with names redacted, city's interest in preserving the confidentiality of informants and protecting the privacy of sexual harassment victim outweighed public interest in disclosure of redacted identities).

(2)Data relating to abortions performed at a public hospital, including the identity of doctors performing same, counseling procedures and numbers of abortions performed, on the ground that:

> The petition on its face encompasses only records which the trial court properly described as statistical records, administrative records and records which are not personal to or identifiable with individual patients. The petition thus states a cause of action under § 19.21, Stats., and the motion to quash was properly denied.

State ex rel. Dalton v. Mundy, 80 Wis. 2d 190, 197, 257 N.W.2d 877, 881 (1977).

(3)Police blotters, without exception, on the ground that:

> Because of the statutory and common-law presumption that public records should be available to the public and because of the strong public-policy interests in making the arrest records public, those interests clearly outweigh the amorphous, ill-defined interests that the public might have in the protection of the reputations of persons who have been arrested. As stated above, the balance of policy considerations in respect to the particular records does not vary from case to case.
>
> We hold as a matter of law that the harm to the public interest in the form of possible damage to arrested persons' reputations does not outweigh the public interest in allowing inspection of the police records which show the charges upon which arrests were made.

Newspapers Inc. v. Breier, 89 Wis. 2d 417, 439-40, 279 N.W.2d 179, 190 (1979).

(4)Pupil parents' names and addresses. *Hathaway v. Joint School Dist. No. 1*, 116 Wis. 2d 388, 342 N.W.2d 682 (1984)

(5)Records of personnel actions taken at closed meetings. *Jensen v. School Dist. of Rhinelander*, 2002 WI App 78 ¶14, 251 Wis. 2d 676, 684, 642 N.W.2d 638, 642 (diminished reputational interests of school superintendent who had already been placed on administrative leave did not warrant withholding from public inspection school board's employment evaluation of superintendent's performance); *Oshkosh Northwestern Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 373 N.W.2d 459 (Wis. Ct. App. 1985). While police officer personnel files generally are not subject to inspection, *see Pangman & Assocs. v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Wis. Ct. App. 1991); specific reports of police conduct may be open to inspection under the balancing test. *State ex rel. Journal/Sentinel Inc. v. Arreola*, 207 Wis. 2d 496, 513-19, 558 N.W.2d 670 (Wis. Ct. App. 1996).

(6)Settlement agreements of private parties when subject to court approval, *In re Estates of Zimmer*, 151 Wis. 2d 122, 442 N.W.2d 578 (Wis. Ct. App. 1989), and settlement agreements of government authorities whether or not filed in court. *Journal/Sentinel, Inc. v. School Bd. of School Dist. of Shorewood*, 186 Wis. 2d 443, 459, 521 N.W.2d 165 (Wis. Ct. App. 1994) ("Taxpayers of a community have a right to know how and why their money is spent.").

(7)Mug shots. *State ex rel. Borzych v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Wis. Ct. App. 1996).

b. Mandatory or discretionary?

In Wisconsin, custodians of public records may be required to notify record subjects before publicly disclosing records pertaining to them to allow the record subject to seek de novo judicial review of the custodian's application of the balancing test. *See Woznicki v. Erickson*, 202 Wis. 2d 178, 191-93, 549 N.W.2d 699, 705 (1996) (subject of records acquired by district attorney in a criminal investigation is entitled to judicial review of district attorney's decision to release records). In *Milwaukee Teachers' Education Association v. Milwaukee Board of School Directors*, 227 Wis. 2d 779, 797-98, 596 N.W.2d 403, 411 (1999), the court extended this holding to all custodians of public records. ("[W]e hold that the implicit right of a de novo judicial review of a public records custodian's decision recognized by this court in *Woznicki* is available to an individual public employee whose privacy or reputational interests would be impacted by disclosure of records

requested under the open records law. This right of de novo judicial review applies whether or not the custodian of the records is a district attorney.") The legislature in 2003 narrowed the "Woznicki" right to notice and judicial review to records of disciplinary actions and investigations, records obtained by warrant or subpoena, and records concerning private sector employees. Wis. Stat. § 19.356.

c. Patterned after federal Freedom of Information Act?

Wisconsin does not follow FOIA exemptions.

> Wisconsin courts have more effectively enforced the public records statute, § 19.21 [now § 19.31-.39], than federal courts have enforced the federal Freedom of Information Act. Unquestionably, the lesser effectiveness of the federal courts is due in part to the consignment by Congress of nine categories of information to the exemption discretion of federal agencies.

In re Wis. Family Counseling Servs. Inc., v. State, 95 Wis. 2d 670, 672-73, 291 N.W.2d 631, 633-34 (Wis. Ct. App. 1980) (footnote omitted). On the other hand, the Wisconsin Supreme Court has more recently touted the FOIA exemption for law enforcement records, 5 U.S.C. § 552(b)(7) (2000), as "concisely list[ing] the factors that support . . . public policies" that weigh against disclosure of police records. *Linzmeyer v. Forcey*, 2002 WI 84 ¶ 32, 254 Wis. 2d 306, 328, 646 N.W.2d 811, 820. The *Linzmeyer* decision even suggested that FOIA factors "provide a framework that records custodians can use to determine whether the presumption of openness in law enforcement records is overcome by another public policy." *Id.* ¶ 33, 254 Wis. 2d at 329, 646 N.W.2d at 820.

2. Discussion of each exemption.

In keeping with the Wisconsin statute's deference to common law principles, only a few exemptions are listed in the Open Records law itself.

a. Law enforcement records required to be closed by federal law. Wis. Stat. § 19.36(2)

b. Computer programs, but not the material used as input for the computer program or the material produced as its product, are exempt from inspection and copying. Wis. Stat. § 19.36(4);*State ex rel. Milwaukee Police Ass'n v. Jones*, 237 Wis. 2d 840, 852, 615 N.W.2d 190, 196 (Wis. Ct. App. 2000) (holding that police department must make digital audio tape of 911 call available for inspection and copying, and that provision of analog tape alone is not sufficient compliance with request).

c. Trade secrets, as defined under the Uniform Trade Secrets Act, are exempt from inspection. Wis. Stat. § 19.36(5)

d. Identity of applicants for public positions who request confidentiality, but not including those applicants who become "final candidates." Wis. Stat. § 19.36(7);

e. Identity of law enforcement informants; Wis. Stat. § 19.36(8); *Hempel v. City of Baraboo*, 2005 WI 120 ¶¶69-78, 284 Wis. 2d 162, 699 N.W.2d 551, 568-70 (regardless of whether an informant requests confidentiality and regardless of whether a pledge of confidentiality is made, custodian must withhold information identifying a police informant unless the custodian determines that the public interest in disclosing the information outweighs the harm to the public interest in disclosing it).

f. Plans or specification of state buildings. Wis. Stat. § 19.36(9).

g. Certain employee personnel records, including personal information like home address, home telephone number or social security number, Wis. Stat. § 19.36(10)(a); information related to ongoing disciplinary investigations, Wis. Stat. § 19.36(10)(b); information related to civil service examinations, Wis. Stat. § 19.36(10)(c); and information used for staff management planning, including performance evaluations. Wis. Stat. § 19.36(10)(d). The "staff management planning" exemption does not apply to records of completed disciplinary investigations. *Kroeplin v. Wisconsin Department of Natural Resources*, 2006 WI App 227, ¶ 32, 297 Wis. 2d 254, 725 N.W.2d 297.

h. Financial identifying information "personally identifiable information, such as credit or debit card numbers, checking account numbers, but not exempting records showing an employee's wage or benefit payments. Wis. Stat. § 19.36(12).

B. Other statutory exclusions.

"Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under § 19.35(1). . ." Wis. Stat. § 19.36(1). Any federal law invoked as an exemption must be specifically applicable to the custodian being asked to release the record in question. *Atlas Transit Inc. v. Korte*, 2001 WI App 286 ¶¶21-22, 249 Wis. 2d 242, 257-58, 638 N.W.2d 625, 632 (federal Driver Privacy Protection Act limiting authority of state motor vehicle departments to release information did not exempt school district records of school bus drivers from disclosure under the Open Records Act). There are numerous such state statutes providing exemptions from disclosure. A substantially complete list follows this outline as Appendix A.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The following categories of records are generally exempt from public inspection as a matter of common law: "Documentary evidence in the hands of a district attorney, minutes of a grand jury, evidence in a divorce action ordered sealed by the court. . . ." (*International Union v. Gooding*, 251 Wis. 362, 372, 29 N.W.2d 730, 736 (1947), followed in, *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991), and information gained under an express pledge of confidentiality where the information was not otherwise available. *Mayfair Chrysler-Plymouth Inc. v. Baldarotta*, 162 Wis. 2d 142, 469 N.W.2d 638, 647-48 (1991); *State ex rel. Youmans*, 28 Wis. 2d at 681, 137 N.W.2d at 474.

D. Are segregable portions of records containing exempt material available?

Custodians are required to segregate producible portions of records from portions which are exempt from disclosure. Wis. Stat. § 19.36(6). This statute mandates redaction whenever possible and "does not give a custodian . . . the option of separating the information or simply denying the open records request." *Osborn v. Board of Regents*, 2002 WI 83 ¶45, 254 Wis. 2d 266, 302, 647 N.W.2d 158, 175 (university is not relieved of its duty to redact under section 19.36(6) simply because it is burdensome to do so).

E. Homeland Security Measures.

While Wisconsin is generally a common law state and does not list exhaustively any exemptions, there are a few specific exemptions related to homeland security: Any record relating to investigative information obtained for law enforcement purposes to be withheld from public access, Wis. Stat. § 19.36(2); identities of law enforcement informants, Wis. Stat § 19.36(8); records of plans or specifications for state buildings, Wis. Stat. § 19.36(9).

III. STATE LAW ON ELECTRONIC RECORDS

Wisconsin's Open Records law includes electronic records within its scope.

A. Can the requester choose a format for receiving records?

Generally speaking, a requester has the right, with respect to any "record which is not in a readily comprehensible form," to receive a copy of the information "assembled and reduced to written form on paper." Wis. Stat. § 19.35(1)(e). *See also State ex rel. Milwaukee Police Ass'n v. Jones*, 237 Wis. 2d 840, 852, 615 N.W.2d 190, 196 (Wis. Ct. App. 2000) (holding that police department must make digital audio tape of 911 call available for inspection and copying, and that provision of analog tape alone is not sufficient compliance with request).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

A custodian of public records is not required "to create a new record by extracting information from existing records and compiling the information in a new format." Wis. Stat. § 19.35(1)(L). An authority is not required to give requesters direct "access to an authority's electronic databases to examine them, extract information from them, or copy them." *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 97, 310 Wis. 2d 397, 751 N.W.2d 736.

C. Does the existence of information in electronic format affect its openness?

No, it does not. The open records law extends to all material on which information is recorded or preserved, "regardless of physical form or characteristics," including "visual or electromagnetic information." Wis. Stat. § 19.32(2). Further, public records custodians are required to furnish "facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours." Wis. Stat. § 19.35(2). Thus, if a computer terminal is needed to inspect a record, and terminals are available to the public employees, the public custodian must, at its option, either provide a print-out of the information under Wis. Stat. § 19.35(1)(e), or make a terminal available to the requester.

D. How is e-mail treated?

The Supreme Court ruled 5-2 that "purely personal e-mail" sent or received by public employees on government computers is not subject to disclosure under the Open Records law. *Schill v. Wisconsin Rapids School Dist.*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177. E-mail "must have a connection to a government function" to be subject to disclosure. *Id.*, ¶ 23. Personal e-mail that is "used as evidence in a disciplinary investigation or to investigate the misuse of government resources" is presumed public, as is e-mail that relates to government duties. *Id.*, ¶ 141.

The lead opinion in *Schill*, joined by three justices, would hold that purely personal e-mail is not within the definition of "record" under Wis. Stat. § 19.32(2). *Id.*, ¶ 23. Two concurring justices, *id.*, ¶¶ 153, 173, and two dissenting justices, ¶ 211, concluded the definition of "record" includes purely personal e-mail.

E. How are text messages and instant messages treated?

Wisconsin has not addressed this issue.

F. How are social media postings and messages treated?

Wisconsin has not addressed this issue.

G. How are online discussion board posts treated?

Wisconsin has not addressed this issue.

H. Computer software

The statutory definition of "record" includes "tapes (including computer tapes) computer printouts and optical disks," but excludes "materials to which access is limited by copyright . . . . " Wis. Stat. § 19.32(2).

1. Is software public?

Wisconsin has not addressed this issue.

2. Is software and/or file metadata public?

Wisconsin has not addressed this issue.

I. How are fees for electronic records assessed?

Fees for electronic records, like all others, may not exceed "the actual, necessary and direct cost of providing the information." *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 107, 310 Wis. 2d 397, 751 N.W.2d 736.

J. Money-making schemes.

Not addressed.

K. On-line dissemination.

Not addressed.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

Autopsy reports are subject to the balancing test. *Journal/Sentinel Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Wis. Ct. App. 1988).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Administrative enforcement records are presumed public but subject to withholding in a proper case under the common law balancing test.

C. Bank records.

Bank examination reports are closed. Wis. Stat. § 220.06(1).

D. Budgets.

Budget records are presumed public but subject to withholding in a proper case under the common law balancing test.

E. Business records, financial data, trade secrets.

Trade secrets, as defined in the Uniform Trade Secrets Act, Wis. Stat. § 134.90(1)(c), may be closed. Wis. Stat. § 19.36(5). Business records not amounting to trade secrets are open to public inspection (presumably subject to common-law balancing). *Wisconsin Elec. Power Co. v. Public Serv. Comm'n*, 110 Wis. 2d 530, 329 N.W.2d 178 (1983); 77 Wis. Op. Att'y Gen. 20 (Feb. 10, 1988).

F. Contracts, proposals and bids.

Contracts, proposals and bids may be closed for so long as competitive or bargaining reasons require. Cf. Wis. Stat. § 19.85(1)(e), § 19.35(1)(a).

G. Collective bargaining records.

Collective bargaining records may be closed for competitive or bargaining reasons. Cf. Wis. Stat. § 19.85(1)(e), § 19.35(1)(a). A tentative agreement must be disclosed to the public and considered by the governmental body in open session before ratification. Wis. Stat. § 19.85(3).

H. Coroners reports.

If a coroner's inquest is conducted in secret, the record of the inquest is also closed. Wis. Stat. § 979.08(7).

I. Economic development records.

Economic development records are presumed public but subject to withholding where competitive or bargaining reasons require under the common law balancing test. *See also State v. Beaver Dam Area Development Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295 (private corporation that performs government functions may be subject to Open Records and Open Meetings laws as a "quasi-governmental corporation.").

J. Election records.

Election returns are open to public inspection. Wis. Stat. § 5.89.

K. Gun permits.

Concealed carry license records are not public except in the context of a prosecution. Wis. Stat. § 175.60(12)(c).

L. Hospital reports.

Individual hospital and medical records are not subject to inspection. Wis. Stat. § 146.82. Ambulance records of treatment and condition of the patient are treated as health care records for this purpose, but other information is public. Wis. Stat. § 146.50(12). Data collected from such records, however, which is not identifiable by patient is subject to inspection. *State ex rel. Dalton v. Mundy*, 80 Wis. 2d 190, 257 N.W.2d 877 (1977).

M. Personnel records.

There is no blanket exemption of public employee personnel records from the Open Records law. *Wisconsin Newspress Inc. v. Sheboygan Falls School Dist.*, 199 Wis. 2d 768, 781-82, 546 N.W.2d 143, 148 (1996). The identity of an applicant for appointment to a non-classified position is not subject to inspection, if the applicant so requests in writing, unless the applicant becomes one of the final five candidates for that position. Wis. Stat. § 19.36(7)(a), (b). Municipal and county personnel records are subject to the common-law balancing test. *Cf. State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 137 N.W. 2d 470 (1965), *modified on reh'g*, 139 N.W.2d 241 (1966); *Jensen v. School Dist. of Rhinelander*, 2002 WI App 78 ¶22, 251 Wis. 2d 676, 688, 642 N.W.2d 638, 643-44 (diminished reputational interests of school superintendent, prominent public official, who had already been placed on administrative leave did not warrant withholding from public inspection school board's employment evaluation of superintendent's performance). However, as a general proposition, complete personnel files of police officers are not subject to public inspection as a matter of public policy. *Village of Butler v. Cohen*, 163 Wis. 2d 819, 472 N.W.2d 579 (Wis. Ct. App. 1991), *Pangman & Assocs. v. Zellmer*, 163 Wis. 2d 1070, 473 N.W.2d 538 (Wis. Ct. App. 1991); *but see Local 2489, AFSCME v. Rock County*, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644 (public employees of a law enforcement agency give up certain privacy rights and are subject to public scrutiny; release of records of completed investigation regarding sheriff's deputies viewing Internet pornography on the job would not be deferred pending outcome of arbitrations challenging sheriff's discipline of such deputies). *Kroeplin v. Wisconsin Dept. of Natural Resources*, 2006 WI App 227, ¶ 47, 297 Wis. 2d 254, 725 N.W.2d 286 ("The public interest in being informed both of the potential misconduct by law enforcement officers and of the extent to which such misconduct was properly investigated is particularly compelling."). The records of undercover officers are not subject to inspection. *Pangman & Assocs. v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Wis. Ct. App. 1991).

Personnel records of private companies that contract with governmental bodies are not thereby rendered subject to inspection under the Open Records law. *Kraemer Bros. Inc. v. Dane County*, 229 Wis. 2d 86, 99, 599 N.W.2d 75, 82 (Wis. Ct. App. 1999) ("We conclude there is a public interest in disclosure of the names, but, in light of the indirect link between that disclosure and the activities of the contracting municipalities, and in light of the existing means of assuring compliance by the municipality, it is not a strong one."); *Building and Const. Trades Council of South Cent. Wisconsin v. Waunakee Community School Dist.*, 221 Wis. 2d 575, 585, 585 N.W.2d 726, 730 (Wis. Ct. App. 1998) ("the "nature" of the documents the Council seeks is that they are, in the first instance, private records which may assume a status equivalent to that of public records . . . only if they have been produced or collected under a contract between the District and Cullen, which they plainly were not."); *but see Atlas Transit Inc. v. Korte*, 2001 WI App 286 ¶¶16-17, 249 Wis. 2d 242, 253-54, 638 N.W.2d 625, 630-31 (lists of school bus drivers filed by private bus companies with school district are not akin to personnel records and are generally subject to public inspection).

4. Personally identifying information.

Personally identifying information concerning "the home address, home electronic mail address, home telephone number or social security number of" public employees or officials must be removed from public records before disclosure. Wis. Stat. § 19.36(10)(b) and (11).

N. Police records.

1. Accident reports.

Accident reports are public records without regard to the common law balancing test. Wis. Stat. § 346.70(4)(f).

2. Police blotter.

Police blotters are public records without regard to the common law balancing test because "in every case the fact of an arrest and the charge upon which the arrest is made is a matter of legitimate public interest." *See Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 436, 279 N.W.2d 179 (1979).

3. 911 tapes.

There is no authority with respect to 911 tapes *per se*. However, radio logs are generally subject to inspection. 67 Wis. Op. Att'y Gen. 12 (Jan. 25, 1978). Requests seeking copies of 911 tapes, like all other requests, must be reasonably limited and defined. *See Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187, 189-90 (Ct. App. 1997) ("We agree that to require a custodian of a record to engage in the copying 180 hours of tape and the creation of a log to identify the time and the order in which the transmissions were received represent a burden far beyond that which may reasonably be required of a custodian of a public record. '[A] request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.'").

4. Investigatory records.

The assertion that a criminal matter "remains, an open and ongoing investigation" is not a sufficiently specific justification for refusing public access to a police incident report. *Portage Daily Register v. Columbia County Sheriff's Dept.*, 2008 WI App 30, ¶ 13, 308 Wis. 2d 357, 746 N.W.2d 525. Non-disclosure may be justified under the balancing test on a case-by-case basis, however, if the custodian can show "that disclosure would interfere with an ongoing investigation." *Id.*, ¶ 20.

a. Rules for active investigations.

Investigatory records generally are subject to the common law balancing test. *Appleton Post-Crescent v. Janssen*, 149 Wis. 2d 294, 441 N.W.2d 255 (Ct. App. 1989). *Journal/Sentinel Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Ct. App. 1988). Basic factual information contained in police reports of firearms discharges by police officers are subject to inspection under this balancing, but police supervisors evaluative comments about the discharges are not. *State ex rel. Journal/Sentinel Inc. v. Arreola*, 207 Wis. 2d 496, 513-19, 558 N.W.2d 670 (Ct. App. 1996). Investigatory records in the hands of the district attorney are absolutely immune from public inspection. *State ex rel. Richard v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991). Juvenile investigatory records are not open to inspection except for news gatherers who wish to obtain news without revealing the identity of the child. Wis. Stat. § 48.396(1).

b. Rules for closed investigations.

When an investigation is closed and no prosecution or disciplinary action is either ongoing or contemplated, there is no risk that releasing a police report will interfere with an enforcement proceeding or jeopardize anyone's right to a fair trial. *Linzmeyer v. Forcey*, 2002 WI 84 ¶ 39, 254 Wis. 2d 306, 331, 646 N.W.2d 811, 821. A law enforcement agency's internal investigation is deemed closed when the agency has taken disciplinary action; it does not remain open because of the possibility of review in arbitration. *Local 2489, AFSCME v. Rock County*, 2004 WI App 210 ¶20, 277 Wis. 2d 208, 225, 689 N.W.2d 644, 653 (fact that sheriff must defend disciplinary action in arbitration does not mean that records of prior, completed investigation become immune from disclosure pending outcome of arbitration).

5. Arrest records.

Records such as the police blotter reporting on arrests in chronological order are subject to inspection, but "rap sheets" compiling an

individual's arrest history are probably not. *Newspapers Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

6. Compilations of criminal histories.

The exemption set forth in § 19.36(2) exempting investigative information obtained for law enforcement purposes from public access "whenever federal law or regulations require or as a condition to receipt of aids by this state require" was intended to permit compliance with 42 U.S.C. § 3789g(b) and 28 C.F.R. § 20 et seq. (criminal history information obtained through support of federal government only to be used for "lawful purposes").

7. Victims.

There is no statute restricting access to the identity of victims. The record created on procedures for the award of compensation to victims is generally subject to public inspection unless otherwise provided by law. Wis. Stat. § 949.16.

8. Confessions.

Confessions are subject to the balancing test.

9. Confidential informants.

Information that would identify a confidential informant must be deleted from a public record before disclosure. Wis. Stat. § 19.36(8).

10. Police techniques.

Investigatory records generally are subject to the common law balancing test. *Appleton Post-Crescent v. Janssen*, 149 Wis. 2d 294, 441 N.W.2d 255 (Ct. App. 1989). *Journal/Sentinel Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Ct. App. 1988). Investigatory records in the hands of the district attorney are absolutely immune from public inspection. *State ex rel. Richard v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991). Juvenile investigatory records are not open to inspection except for news gatherers who wish to obtain news without revealing the identity of the child. Wis. Stat. § 48.396(1).

11. Mug shots.

A mug shot is a public record. *State ex rel. Borzych v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Wis. Ct. App. 1996).

12. Sex offender records.

Records of sexually violent person commitments under Wis. Stat. Chapter 980 are presumed public.

13. Emergency medical services records.

Public ambulance transport records are public, including the name of the person transported, date of call, dispatch times and destination, but no information disclosed "may contain details of the medical history, condition or emergency treatment of any patient." Wis. Stat. § 256.15(12)(b).

O. Prison, parole and probation reports.

Presentence investigation reports are, after sentencing, "confidential and shall not be made available to any person except upon specific authorization of the court." Wis. Stat. § 972.15(4). Correctional facilities are required to maintain a register of inmates, Wis. Stat. § 302.17. This record is presumably subject to inspection under the balancing test. Information submitted with respect to parole hearings is generally subject to public inspection except to the extent the parole board decides on a case-by-case basis to restrict information or to the extent the information is otherwise statutorily restricted from public inspection. Wis. Admin. Code § HSS 30.05(3c) (1987). Records which would endanger the security of any state correctional institution or compromise the rehabilitation of a person in the custody thereof are excluded from inspection. Wis. Stat. § 19.35(1)(am)2.c. and d. Denial of access to documents identifying person who supply information to the parole commission has been upheld. *State ex rel. Bergmann v. Faust*, 226 Wis. 2d 273, 288, 595 N.W.2d 75, 82 (Wis. Ct. App. 1999) ("We hold that protecting persons who supply information or opinions about an inmate to the parole commission from harassment, retaliation or other harm is a public interest that may, on balance, outweigh the public interest in having access to documents that could identify those persons.").

P. Public utility records.

The Public Service Commission may "withhold from public inspection any information which would aid a competitor or a public utility in competition with the public utility." Wis. Stat. § 196.14. In addition, administrative hearings, which include Public Service Commission hearings, may take steps to "protect the trade secrets." Wis. Stat. § 227.46(7).

Q. Real estate appraisals, negotiations.

The law has not addressed this issue directly, however, records of this nature may be closed so long as there is a competitive or bargaining need to close. *Cf.* Wis. Stat. § 19.85(1)(e), § 19.35(1)(a).

R. School and university records.

University application records are public after student identifying information is removed. *Osborn v. Board of Regents of the Univ. of Wis. System*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158.

Elementary and secondary student records are confidential except that directory data which may include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received may be made available to public inspection if the parent, legal guardian or guardian ad litem has been informed that the aforesaid information has been defined as directory data and may be released unless the parent, legal guardian or guardian ad litem objects. Wis. Stat. § 118.125(2)(j). The same protections are extended to students of institutions of higher learning which receive federal funds by 20 U.S.C. § 1232(2)(g). But neither the federal law nor the public policy underlying Wis. Stat. § 118.125(2)(j) preclude disclosure of university admission records from which all personally identifying information has been redacted. *Osborn v. Board of Regents*, 2002 WI 83 ¶¶31, 40, 254 Wis. 2d 266, 293, 298, 647 N.W.2d 158, 171, 174. Further, parents' names and addresses are not student records, and are therefore subject to disclosure notwithstanding Wis. Stat. § 118.125(2)(j). *See Hathaway v. Joint School District*, 116 Wis. 2d 388, 342 N.W.2d 682 (1984). Library circulation records are not subject to inspection. Wis. Stat. § 43.30(1).

S. Vital statistics.

Absent court order, only a "person with a direct and tangible interest in a vital record" is entitled to full disclosure, or a certified copy, of vital records. Wis. Stat. § 69.20(1). Information in vital statistics are open to inspection, but not copying, under the general open records balancing test, with certain exceptions:

a. Information which is collected for statistical purposes only may not be disclosed, except to the subject of the information. Wis. Stat. § 69.20(2)(a).

b. Information concerning the birth of babies to mothers who were at any time between conception and delivery not married, Wis. Stat. § 69.20(2)(b), subject to very narrow exceptions. Wis. Stat. § 69.20(1).

2. Certified copies are limited to persons with a direct and tangible interest in the record. Wis. Stat. § 69.21(1)(a)2. Subject to the exceptions stated in 1., any person may obtain an uncertified copy. Wis. Stat. § 69.21(2).

3. Reports of induced abortions are to be kept anonymous and may not reveal the identity of any patient or health care provider. Wis. Stat. § 69.186(2).

3. Death certificates.

Beginning on January 1, 2003, publicly available death records do not contain information on final disposition and cause of death, or injury-related data. Wis. Stat. § 69.18(1m).

4. Infectious disease and health epidemics.

Not addressed.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

Each authority is required to designate one or more custodians and to post prominently at its offices a notice containing a description of its organization and the times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records. Wis. Stat. § 19.34(1).

2. Does the law cover oral requests?

a. Arrangements to inspect & copy.

Prior arrangements are required only if the custodian does not maintain regular office hours at the location where the records are kept. Wis. Stat. § 19.34(2)(b).

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

Custodians must respond to oral requests. Wis. Stat. § 19.35(1)(h). Custodians may orally deny an oral request, unless the requester demands a written statement of reasons within 5 business days of the oral denial. Wis. Stat. § 19.35(4)(b).

(2). Do subsequent steps need to be in writing?

No action to enforce access may be commenced unless the request was made in writing. Wis. Stat. § 19.35(1)(h).

3. Contents of a written request.

a. Description of the records.

The request must reasonably describe the requested record or the information requested and must be reasonably limited in subject matter and length of time covered by the record. Wis. Stat. § 19.35(1)(h). There is no requirement of any "magic words" in a records request, and a custodian may not ignore a request because it is mistakenly termed a "FOIA" request. *ECO Inc. v. City of Elkhorn*, 2002 WI App 302 ¶ 22, 259 Wis. 2d 276, 292, 655 N.W.2d 510, 517-18.

b. Need to address fee issues.

The requester is not required to tender fees until required by the custodian, who may ask for fees in advance only when the total fee will exceed $5.00. Wis. Stat. § 19.35(3)(f). There is no advantage to tendering fees until asked.

c. Plea for quick response.

The requester may wish to remind the custodian of the duty to produce records "as soon as practicable and without delay." Wis. Stat § 19.35(4). A realistic specification of a time to respond is also useful as a predicate to suit.

d. Can the request be for future records?

The statute makes no provision for requests for records which are not in existence at the time they are requested. 73 Wis. Op. Att'y Gen. 38 (Feb. 28, 1984).

e. Other.

Requesters are not required to identify themselves or state their purpose unless the record is kept at a private residence or security or federal law or regulations so require. Wis. Stat. § 19.35(1)(i).

Requests may be made by mail and the custodian is required to provide a copy in that case. Wis. Stat. § 19.35(1)(b), (i). This statutory provision overrules *Coalition for a Clean Government v. Larsen*, 166 Wis. 2d 159, 479 N.W.2d 576 (Wis. Ct. App. 1991). If the requester appears in person, the authority has the option of producing a copy or requiring the requester to make the requester's own copy.

B. How long to wait.

Records must be produced by the authority "as soon as practicable and without delay." Wis. Stat. § 19.35(4)(a). Delay is not the equivalent of a denial, but any delay in granting access may become the basis for the institution of a suit to obtain access. Wis. Stat. § 19.37(1). On the other hand, a response declaring that the requested records will not be produced until some uncertain date in the future will be treated as a denial. *WTMJ Inc. v. Sullivan*, 204 Wis. 2d 452, 555 N.W.2d 140 (Wis. Ct. App. 1996). The Supreme Court ruled in *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 59, 310 Wis. 2d 397, 751 N.W.2d 736, that the enforcement action was commenced prematurely "because the municipalities had not denied WIREdata's requests for the records before WIREdata filed the mandamus action."

C. Administrative appeal.

Administrative appeals are not provided. *Cf. State ex rel. Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 595, 547 N.W.2d 587, 592 (1996) (records requesters need not give notice or opportunity for review to public entity before commencing an action under the Open Records law). An informal "administrative" appeal may be taken to the state attorney general who is specifically authorized to respond to any request for advice as to the applicability of the open records law to any specific set of circumstances. Wis. Stat. § 19.39. Generally, custodians comply with that advice.

D. Court action.

1. Who may sue?

The sole means for enforcing a request for inspection of a public record is an action for mandamus maintained by the requester, the district attorney or the attorney general. § 19.37(1).

2. Priority.

Under Wisconsin civil procedure a court may shorten the time to respond to mandamus. Wis. Stat. § 801.02(5).

3. Pro se.

Because of the basically common-law nature of access to records in Wisconsin, *pro se* procedures are definitely not recommended since few lay persons understand how to locate and apply court-made law. If the individual desiring access is unable to afford an attorney, the local district attorney or the attorney general may be persuaded to appear on behalf of the requester. Wis. Stat. § 19.37(1)(b).

4. Issues the court will address:

The court may rule upon whether or not:

a. the record should or should not be produced for inspection;

b. the fees charged were proper or excessive;

c. any delay was excessive.

There is no provision for declaratory relief.

In deciding an Open Records case, the court is not limited to the evidence that was before the records custodian at the time of his or her decision. *See Kailin v. Rainwater*, 226 Wis. 2d 134, 146, 593 N.W.2d 865, 870 (Wis. Ct. App. 1999) ("Because of the de novo determination of the question of law involved, the trial court may consider all relevant and material information brought to its attention by the parties,

even in a trial, regardless of whether that information was before the records custodian.").

The court may permit the party requesting access to have access to the record under restrictive orders for the purpose of arguing the case if the court deems that appropriate. Wis. Stat. § 19.37(1)(a). Either the grant or denial of access is not an abuse of discretion. *Milwaukee Journal v. Call*, 153 Wis. 2d 313, 450 N.W.2d 515 (Wis. Ct. App. 1989). *Appleton Post-Crescent v. Janssen*, 149 Wis. 2d 294, 441 N.W.2d 255 (Wis. Ct. App. 1989). Vaughn indices have not heretofore been required or used in Wisconsin practice.

The subject of a record is not a necessary party to enforcement proceedings, *Wisconsin State Journal v. University of Wisconsin-Platteville*, 160 Wis. 2d 31, 465 N.W.2d 266 (Wis. Ct. App. 1990), but ordinarily has a right to intervene. *Armada Broadcasting, Inc. v. Stirn*, 183 Wis. 2d 463, 516 N.W.2d 357 (1994)

5. Pleading format.

The requester may proceed by a petition for alternative writ of mandamus or by summons and complaint, often accompanied by a motion to shorten time for answer since the records custodian has already considered and denied access to the requested records and may not add to the justifications set forth in the denial letter. *See* Wis. Stat. § 801.02(5); *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 427, 279 N.W.2d 417 (1979).

6. Time limit for filing suit.

There is no time limit for filing suit.

7. What court.

The action should be filed in the circuit court for the county in which the custodian has his or her office.

8. Judicial remedies available.

The remedy is an order to release the record. Wis. Stat. § 19.37(1).

9. Litigation expenses.

If the requester prevails in whole or in substantial part, the court shall in addition award reasonable attorneys' fees, damages of not less than $100 and other actual costs to the plaintiff. Wis. Stat. § 19.37(2). *WTMJ Inc. v. Sullivan*, 204 Wis. 2d 452, 458, 555 N.W.2d 140, 143 (Wis. Ct. App. 1996). But where the party is an attorney who represents him or herself no fees may be awarded. *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340 (Wis. Ct. App. 1991).

10. Fines.

An authority or legal custodian who arbitrarily and capriciously denies or delays the response or charges excessive fees may be required to forfeit not more than $1,000, in an action brought by the attorney general or a district attorney. Wis. Stat. § 19.37(4)

11. Other penalties.

If the court finds that an authority or custodian has "arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester." Wis. Stat. § 19.37(3).

12. Settlement, pros and cons.

Once access cases reach the stage of court action, they are rarely settled, although claims for attorney's fees are sometimes compromised.

E. Appealing initial court decisions.

Judicial review on appeal is *de novo* in the sense that "the trial judge should then make his determination of whether or not the harm likely to result to the public interest by permitting the inspection outweighs the benefit to be gained by granting inspection." *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 682, 137 N.W.2d 470, 475 (1965), *modified on reh'g*, 139 N.W.2d 241 (1966).

1. Appeal routes.

Appeal is to the court of appeals. Wis. Stat. § 808.03(1).

2. Time limits for filing appeals.

The time to appeal is 45 days from the entry of judgment if a written notice of entry is given within 25 days of entry or within 90 days of entry if no notice is given. Wis. Stat. § 808.04(1).

3. Contact of interested amici.

Briefs of *amici* may be filed if a request is filed within ten days after the respondent's brief is filed, *i.e.*, within 80 days after the record is filed in the appellate court. Wis. Stat. § 809.19(7). The brief need not be filed with the request and may be filed thereafter within the time specified by the court if the request to file a brief of *amicus curiae* is granted.

F. Addressing government suits against disclosure.

Wisconsin has not addressed this issue.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

An "open session" of a public body "means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Wis. Stat. § 19.82(3). The open meetings law may be enforced upon "the verified complaint of any person." Wis. Stat. § 19.97(1).

B. What governments are subject to the law?

"'Governmental body' means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district . . .; a family care district . . .; a nonprofit corporation operating the Olympic ice training center . . .; or a formally constituted subunit of any of the foregoing; but excludes any such body or committee or subunit which is formed for or meeting for the purpose of collective bargaining. . . ." Wis. Stat. § 19.82(1).

C. What bodies are covered by the law?

1. Executive branch agencies.

Executive officials are covered to the extent they participate in a "meeting" (see I.D.) of a "governmental body." Chief executive officers of governmental bodies are typically not covered unless they are members of some multi-member board, commission, committee, etc. Thus, executive functions which can be conducted by a single individual are not covered. *State ex rel. Plourde v. Habhegger*, 2006 WI App 147, ¶ 12, 294 Wis. 2d 746, 720 N.W.2d 130 ("We conclude the open meetings law is not meant to apply to single-member government bodies").

2. Legislative bodies.

"This subchapter shall apply to all meetings of the Senate and Assembly and the committees, subcommittees, and other subunits thereof, except. . ." scheduling, other meetings exempted by legislative rule and caucuses. Wis. Stat. § 19.87.

Despite this explicit statement of legislative intent, however, the first attempt to enforce the open meetings law against a joint legislative committee failed, more than 35 years after the open meetings law was adopted. The Wisconsin Supreme Court ruled in *State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ___ Wis. 2d ___, 798 N.W.2d 436, that separation of powers principles preclude judicial review of the legislature's compliance with its own rules of procedure concerning passage of legislation, whether those rules are internal or statutory. To do so, a sharply divided court ruled, would invade the constitutional power of the legislature to declare what shall become law. Barring an amendment of the state constitution, therefore, the open meetings law cannot be applied to legislative bodies.

3. Courts.

"The sittings of every court shall be public and every citizen may freely attend the same. . . ." Wis. Stat. § 757.14. However, the Open Meetings Law does not apply to judicial agencies. *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

4. Nongovernmental bodies receiving public funds or benefits.

"Quasi-governmental corporations" and corporations created by governmental action are open. Wis. Stat. § 19.82(1).

5. Nongovernmental groups whose members include governmental officials.

Non-governmental groups are not covered per se.

Non-governmental bodies may be subjected to the requirements of the open meetings law by contract. *State ex rel. Journal/Sentinel Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

6. Multi-state or regional bodies.

"All meetings of the [Midwest Interstate Low Level Radioactive Waste] commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters." Wis. Stat. § 16.11(3)(e).

7. Advisory boards and commissions, quasi-governmental entities.

Advisory Boards and commissions are covered if they are created by official action. Wis. Stat. § 19.82(1); *Outagamie County v. Smith*, 38 Wis. 2d 24, 155 N.W.2d 639 (1968). "Quasi-governmental corporations" need not be created by government for the open meetings law to apply. A private corporation that significantly resembles a governmental corporation in function, effect or status, is covered. *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, ¶¶ 33-36, 312 Wis. 2d 84, 752 N.W.2d 295 (economic development corporation that serves only the city is a quasi-governmental corporation). The non-exhaustive list of factors to be considered in making this determination includes: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation's records. *Id.*, ¶ 62.

8. Other bodies to which governmental or public functions are delegated.

These bodies are likewise covered if they are created by official action. Wis. Stat. § 19.82(1); *Outagamie County v. Smith*, 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

9. Appointed as well as elected bodies.

The definition of "governmental bodies" includes both elected and appointed bodies. *See* Wis. Stat. § 19.82(1).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

"Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for that purpose. The statutory term "meeting" does not include any social or chance gathering or conference which is not intended to avoid the Open Meetings law. Wis. Stat. § 19.82(2). Thus, only multi-member, formally constituted groups of public officials are covered. A meeting at which a negative quorum is present, *i.e.*, sufficient members of the governmental body to block action on the subject under consideration, and the gathering is for the purpose of exercising responsibilities, authority, power or duties, the meeting is required to be open. *State ex rel. Newspapers Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

2. Nature of business subject to the law.

Gatherings for the purpose of obtaining information with a view toward future action are meetings. *State ex rel. Hodge v. Village of Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993); *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979). "[W]henever members of

a governmental body meet to engage in government business, be it discussion, decision or information gathering, the Open Meeting Law applies. . . ." *Showers*, 135 Wis. 2d at 80, 398 N.W.2d at 156.

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Conference calls involving members of a governmental body are considered “meetings.” Therefore such calls must reasonably be accessible to the public and notice must be provided. *See* 69 Atty. Gen. 143. & Wis. Stat. § 19.82.

"Any meeting conducted via a telephone conference call is subject to all the provisions of the open meetings law, secs. 19.81-19.89, Stats., including the public notice requirements under sec. 19.84, Stats." 69 Op. Atty Gen. Wis. 143.

b. E-mail.

“"The widespread use of electronic mail and other electronic message technologies creates special dangers for governmental officials trying to comply with the open meetings law. Although two members of a governmental body larger than four members may discuss the body's business without violating the open meetings law, features like 'forward' and 'reply to all' common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Moreover, because of electronic mail communication, it is quite possible that a quorum of a governmental body may receive the sender's message — and therefore may receive information on a subject within the body's jurisdiction — in an almost real-time basis, the way they would receive it in a meeting of the body. Although no Wisconsin court has applied the open meetings law to electronic mail communications, it is likely that the courts will try to determine whether electronic communication is more like written correspondence which does not raise open meetings law concerns, or more like conversation, which does raise those concerns. Courts are likely to consider the following factors: (1) the number of participants involved in the communication; (2) the number of communications regarding the subject; (3) a time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications. Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body's membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of their replies." 2005 Wisc. AG LEXIS 29, 2-4 (Wisc. AG 2005).

c. Text messages.

Wisconsin has not addressed this issue.

d. Instant messaging.

Wisconsin has not addressed this issue.

e. Social media and online discussion boards.

Wisconsin has not addressed this issue.

E. Categories of meetings subject to the law.

1. Regular meetings.

"[W]henever members of a governmental body meet to engage in government business, be it discussion, decision or information gathering, the Open Meeting Law applies. . . ." *Showers*, 135 Wis. 2d at 80, 398 N.W.2d at 156.

a. Definition.

"Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for that purpose. The statutory term "meeting" does not include any social or chance gathering or conference which is not intended to avoid the Open Meetings law. Wis. Stat. § 19.82(2).

b. Notice.

(1). Time limit for giving notice.

"Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting." Wis. Stat. § 19.84(3).

(2). To whom notice is given.

"Public notice of all meetings of a governmental body shall be given in the following manner: . . . . (b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper. . . or, if none exists, to a news medium likely to give notice in the area." Wis. Stat. § 19.84(1). When a meeting is held to take final action on the dismissal of a public employee, or to conduct an evidentiary hearing on a dismissal, the body must provide actual notice to the employee involved. Wis. Stat. § 19.85(1)(b). No such actual notice is required if the body does no more than discuss a possible dismissal. *See State ex rel. Epping v. City of Neillsville Common Council*, 218 Wis. 2d 516, 521, 581 N.W.2d 548, 551(Wis. Ct. App. 1998) ("Thus, if no evidentiary hearing or final action took place during the closed sessions, Epping was not entitled to actual notice of the meetings"); *but see Campana v. City of Greenfield*, 38 F. Supp. 2d 1043 (E.D. Wis. 1999)(where mayor made specific accusations against treasurer, brought 30 documents allegedly supporting accusations, and provided testimony, meeting was an "evidentiary hearing" requiring actual notice to treasurer).

(3). Where posted.

No specific provisions for posting.

(4). Public agenda items required.

"Every public notice of a meeting of a governmental body shall set forth the . . . subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). General subject matters such as "new matters" or "citizens and delegations" are not sufficiently specific. 66 Ops. Att'y Gen. 143, 195 (April 18, 1977). A notice specifically declaring that the body will consider a resolution approving an identified plan is not rendered deficient under the statute by a "boilerplate" disclaimer stating that the body "will not take any formal action at this meeting." *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64 ¶15, 252 Wis. 2d 628, 638, 643 N.W.2d 796, 801 (section 19.84(2) "does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken"). Although such a notice "creates some ambiguity," the court held that it "contains enough information to alert any interested individual who might have been confused by the notice to find out more." *Id.* ¶17, 252 Wis. 2d at 639, 643 N.W.2d at 801.

With respect to the subject matter notice requirement, the Wisconsin Supreme Court determined that "the plain meaning of Wis. Stat. § 19.84(2) sets forth a reasonableness standard, and that such a standard strikes the proper balance contemplated in Wis. Stat. §§ 19.81(1) and (4) between the public's right to information and the government's need to efficiently conduct its business." *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶ 3, 301 Wis. 2d 178, 732 N.W.2d 804. Factors to be considered in making this determination include: "The

burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate." *Id.*, ¶ 28. The determination must be made on a case-by-case basis, bearing in mind that "the demands of specificity should not thwart the efficient administration of governmental business." *Id.*, ¶ 29.

(5). Other information required in notice.

The meeting notice must also include "the time, date, place . . . of the meeting . . . in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). When a quorum of a parent body plans to attend a meeting of a subcommittee or other subordinate body, notice of the meeting of the parent body must be given in addition to the notice of the subcommittee's (or other subordinate body's) meeting. *State ex re. Badke v. Village Board of Greendale*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

(6). Penalties and remedies for failure to give adequate notice.

See IV.C. 8 and 10 below for the penalties. Attending a meeting with knowledge that proper notice has not been given is a violation of the Open Meetings Law. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

c. Minutes.

"The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in [the open records law]." Wis. Stat. § 19.88(3). Secret ballots may not be used except for the election of officers of the body. Wis. Stat. § 19.88(1).

2. Special or emergency meetings.

No specific provisions for notice of special or emergency meetings. However, the requirement to provide notice "at least 24 hours prior" to a meeting does not apply whenever "for good cause such notice is impossible or impractical, in which case shorter notice may be given but in no case may the notice be provided less than 2 hours in advance of the meeting." Wis. Stat. § 19.84(3).

3. Closed meetings or executive sessions.

a. Definition.

Any meeting which is not an "open session" is closed. "Open session means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Wis. Stat. § 19.82(3).

b. Notice requirements.

The notice and agenda requirements for a closed meeting are the same as those for an open meeting. See E.1.b., above. However, "[n]o governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session." Wis. Stat. § 19.85(2).

c. Minutes.

"The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in [the open records law]." Wis. Stat. § 19.88(3). Secret ballots may not be used except for the election of officers of the body. Wis. Stat. § 19.88(1).

d. Requirement to meet in public before closing meeting.

Any meeting of a governmental body, upon motion duly made and carried [in open session], may be convened in closed session under one or more of the exemptions provided in this section. Wis. Stat. § 19.85(1).

e. Requirement to state statutory authority for closing meetings before closure.

"No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session." Wis. Stat. § 19.85(1).

f. Tape recording requirements.

There is no requirement to record closed sessions.

F. Recording/broadcast of meetings.

"Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting." Wis. Stat. § 19.90.

G. Are there sanctions for noncompliance?

For violations of the open meetings law, violators are fined between $25 and $300 for each violation. Wis. Stat. § 19.96. Violators may avoid the fine by voting to keep the meeting open. Wis. Stat. § 19.96. A court may void any action taken at an improperly closed meeting. Wis. Stat. § 19.97(3) For violations not prosecuted by the state or district attorney, who have the primary responsibility to enforce the open meetings law, private parties may recover attorney’s fees. Wis. Stat. § 19.97(4).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

In contrast to the Open Records Law, exemptions to the Open Meetings Law are specific. Unless a meeting falls within one of the specific categories of exemption, it may not be closed. Wis. Stat. § 19.85(1). The exemptions are narrowly construed. *Cf. Chvala v. Bubolz*, 204 Wis. 2d 82, 552 N.W.2d 892 (Wis. Ct. App. 1996) (exemptions to the Open Records law are to be construed narrowly).

b. Mandatory or discretionary closure.

Closure is discretionary. *State ex rel. Bilder v. Delavan Township*, 112 Wis. 2d 539, 334 N.W.2d 252 (1983).

2. Description of each exemption.

The statutory grounds upon which meetings may be closed are (a) deliberating following a judicial or quasi-judicial trial or hearing; (b) considering negative action against an employee or licensee of the state or an investigation of same; (c) considering employment, promotion, compensation or performance evaluation data of a public employee (but not elected officials; see 76 op. Att'y Gen. 276 (Nov. 6, 1987); (d) considering applications for probation or parole or strategies for crime detection or prevention; (e) deliberating or negotiating concerning specified public business whenever competitive or bargaining reasons require; (f) deliberating for the relocation of a burial site; (g) considering financial, medical, social or personal histories or disciplinary data, preliminary consideration of specific personnel problems or the investigation of charges against specific persons, if such discussion would be likely to have a substantial adverse affect upon the reputation of the person referred to; (h) conferring with counsel concerning actual or likely litigation; (i) state government accountability board or local

ethics board consideration of requests for confidential written advice and (j) considering economic adjustment program applications if public consideration would adversely affect the business or its employees. Wis. Stat. § 19.85(1).

B. Any other statutory requirements for closed or open meetings.

The following meetings are open: Wis. Stat. §§ 36.07(6) (University of Wisconsin Regents); Wis. Stat. § 59.11(4) (County Boards); Wis. Stat. § 59.70(12)(b) (Mosquito Control Districts); Wis. Stat. § 59.694(3) (Zoning Adjustment Boards); Wis. Stat. § 61.32 (Village Boards); Wis. Stat. § 62.11 (Common Councils of Cities); Wis. Stat. § 62.23(7)(e)(3) (City Board of Appeals); Wis. Stat. § 70.47(am) (Board of [Tax Assessment] Review); Wis. Stat. § 73.01 (Tax Appeals Commission); Wis. Stat. § 227.18 (Administrative Rule Making Hearings); Wis. Stat. § 62.13(5)(d) (Police and Fire Commission Hearings); Wis. Stat. § 38.10(2) (Vocational, Technical, and Adult Education Appointment Committee); Wis. Stat. § 59.84(6) (County Budget Hearings); Wis. Stat. § 64.07(6) ([City] Common Council); Wis. Stat. § 65.04(7) (Board of [Budgetary] Estimates); Wis. Stat. § 66.433(6) (Community Relations — Social Development Commission); Wis. Stat. § 111.70(4)(c)(m)(2) (Municipal Arbitration Proposals); Wis. Stat. § 114.136(2) (Airport Approach Protection Hearings); and Wis. Stat. § 231.02(3) (Wisconsin Health Facilities Authority).

The following meetings are closed: Wis. Stat. § 560.15(5) (Council for Economic Adjustment).

C. Court mandated opening, closing.

There are no court-created or common-law exceptions to the requirements of the Open Meetings Law.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Rulemaking hearings are open. Wis. Stat. § 227.18(1).

1. Deliberations closed, but not fact-finding.

Deliberations of adjudications by administrative bodies are closed, but fact finding is open. Wis. Stat. § 19.85(1)(a). The exception for deliberations applies only to a "case" that is the subject of a quasi-judicial trial or hearing. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 72, 508 N.W.2d 603 (1993) (the term "case" contemplates a controversy between adverse parties; the exception does not apply to deliberations on a permit application). Adjudicative administrative hearings conducted before a hearing examiner are not expressly required to be open to the public because the Open Meetings Law only applies to "governmental bodies" i.e., multimember bodies.

2. Only certain adjudications closed, i.e. under certain statutes.

Some administrative proceedings are closed. *See* Wis. Stat. § 560.15(5) (Council for Economic Adjustment).

B. Budget sessions.

City budget sessions are expressly open. Wis. Stat. §§ 64.07(6); 65.04(7). A similar requirement exists for the Milwaukee School Board's budget hearing. Wis. Stat. § 119.16(8)(a). There is no provision for closing other budget sessions.

C. Business and industry relations.

Meeting for the purpose of deliberating or negotiating the purchasing of public properties, the investing in public funds, or conducting other specified business may be closed whenever competitive or bargaining reasons require. Wis. Stat. § 19.85(1)(e). *State ex rel. Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640 (the exception must be narrowly construed, authorizing closing only that part of a meeting in which negotiating strategy is discussed).

D. Federal programs.

Not exempted, but could be closed under Wis. Stat. § 19.85(1)(e) (above) if a bargaining position would be compromised.

E. Financial data of public bodies.

Not exempted, but could be closed under Wis. Stat. § 19.85(1)(e) (above) if competitive bargaining would be harmed.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Administrative hearing examiners may protect "trade secrets." Wis. Stat. § 227.46(7). Personal financial data may be the subject of a closed meeting if its disclosure would have a "substantial adverse effect upon the reputation of any person." Wis. Stat. § 19.85(1)(f).

G. Gifts, trusts and honorary degrees.

Not exempted.

H. Grand jury testimony by public employees.

Grand jury proceedings are secret. *Cf.* Wis. Stat. §§ 756.11, 756.145(2), 756.21. Likewise the Wisconsin one-person grand jury known as a "John Doe" proceeding may, but need not be, secret. Wis. Stat. § 968.26; *In re Wis. Family Counseling Servs. v. State*, 95 Wis. 2d 670, 291 N.W.2d 631 (Wis. Ct. App. 1980).

I. Licensing examinations.

Not exempted.

J. Litigation; pending litigation or other attorney-client privileges.

Meetings for purpose of conferring with counsel on the subject of pending or likely litigation may be closed. Wis. Stat. § 19.85(l)(g).

K. Negotiations and collective bargaining of public employees.

Everything related to collective bargaining, except the approval of the contract, may be closed because a "meeting for the purpose of collective bargaining" is not a "meeting" as defined in Wis. Stat. § 19.82(1). *See also* Wis. Stat. § 19.85(3); *Board of School Directors v. Wisconsin Employment Relations Comm'n*, 42 Wis. 2d 637, 168 N.W.2d 92 (1969). Once a public body has reached a tentative agreement with a bargaining unit, the body must conduct its vote on approval of that tentative agreement, as well as the discussions and deliberations leading to a vote, in open session. 81 Wis. Op. Att'y Gen. 139 (June 10, 1994).

L. Parole board meetings, or meetings involving parole board decisions.

Closed. *See* Wis. Stat. § 19.85(1)(d).

M. Patients; discussions on individual patients.

Discussions of patients and their records are exempt only if likely to have substantial adverse affect upon the reputation of the person referred to. Wis. Stat. § 19.85(1)(f).

N. Personnel matters.

Hiring interviews may be closed. Wis. Stat. § 19.85(1)(c).

Disciplinary matters may be closed. Wis. Stat. § 19.85(1)(b). Ethics advice may be closed. Wis. Stat. § 19.85(1)(h). A disciplined employee has no right, however, to have the actual vote on the disciplinary action taken in closed session. *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 370 N.W.2d 271 (Wis. Ct. App.), *review denied*, 125 Wis. 2d 584, 375 N.W.2d 216 (1985).

But discussions of positions, as opposed to individual employees, must be open. 80 Wis. Op. Att'y Gen. 176 (Feb. 25, 1992).

O. Real estate negotiations.

Real estate negotiations may be closed "whenever competitive or bargaining reasons require." Wis. Stat. § 19.85(1)(e). *State ex rel. Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640 (the exception must be narrowly construed, authorizing closing only that part of a meeting in which negotiating strategy is discussed).

P. Security, national and/or state, of buildings, personnel or other.

Not addressed by the Open Meetings Law.

Q. Students; discussions on individual students.

Meetings discussing individual students could be closed if the discussion involved personal histories or disciplinary data or preliminary investigation of charges if the matter, "if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person." Wis. Stat. § 19.85(1)(f).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

Wisconsin's Open Meetings Law, in contrast to its Open Records Law, is basically intended to be enforced by an action for penalties after the violation, brought by the attorney general or local district attorney. There are no pre-meeting procedures for the assertion or preservation of rights by persons who wish to attend. Wis. Stat. § 19.97. *See also State ex rel. Auchinleck v. Town of La Grange*, 200 Wis. 2d 585, 595, 547 N.W.2d 587 (1996) (claimant under the Open Records is not required to comply with 120-notice-of-claim requirement contained in state tort claims act). However, a request for declaratory relief, mandamus or an injunction may be made before, as well as after, a meeting.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The law does not provide any expedited procedure or address the issue specifically.

B. How to start.

If a person is aggrieved by threatened or actual exclusion from a meeting, an initial request in the form of a verified complaint must be made to the attorney general or the local district attorney (in Milwaukee County, the corporation counsel) to commence an action for penalties, declaratory judgment, mandamus or injunctive relief as appropriate. Wis. Stat. § 19.97(1) and (2).

In the event the district attorney (corporation counsel) fails to act within 20 days, the person complaining may bring an action on his or her relation in the name, and on behalf of, the state. Wis. Stat. § 19.97(4). In so doing, the person acts as a "private attorney general" and "stands in the shoes of the state enforcing not only her own right, but also, the rights of the citizens of this state to open government." *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16 ¶15, 278 Wis. 2d 388, 398, 692 N.W.2d 304, 309.

The complaint should normally state the time and place of the meeting, the persons present who are members of the governmental body, the subject matter under discussion and the specific violation alleged, i.e., exclusion, secret ballot or the like.

After action is commenced, either by the district attorney or the aggrieved party, the offending members of a governmental body have 20 days to answer a complaint. Forfeiture actions generally take approximately one year thereafter.

There are no other provisions for subsequent or concurrent remedial measures. Trial court decisions may be appealed.

C. Court review of administrative decision.

1. Who may sue?

Only the attorney general or local district attorney (corporation counsel) may sue unless a complaint has been made to the district attorney (corporation counsel) and that attorney has refused to sue. Then, any person who requested action may proceed.

2. Will the court give priority to the pleading?

There is no provision for docket priority.

3. Pro se possibility, advisability.

The initial complaint with the district attorney may be filed pro se, but a *pro se* suit is not advisable because the district attorney will normally pursue cases with clear merit and an attorney is probably required for the complainant to have a chance of prevailing in doubtful cases. Governmental bodies rarely retreat on a closed meeting question unless threatened by the attorney general, a district attorney or a knowledgeable private attorney.

4. What issues will the court address?

a. Open the meeting.

Except in rare cases, the action has been brought to determine whether the meeting should have been open, whether proper notice was given or proper procedure to close was followed in the statutory forfeiture. In rare cases, simple declaratory relief has been sought. *See State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

b. Invalidate the decision.

The court may also invalidate the action taken at a meeting held in violation of the law if the court "finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken." Wis. Stat. § 19.97(3).

c. Order future meetings open.

Declaratory and injunctive relief is available to require that future meetings be open. Wis. Stat. § 19.97(2). The fact that the primary governmental action affecting the person complaining about the Open Meetings violation is declared void pursuant to § 19.97(3) does not render moot the claims for declaratory relief and civil forfeitures based on the same or related Open Meetings infractions. *See State ex rel. Lawton v. Town of Barton*, 2005 WI App 16 ¶¶15, 19, 278 Wis. 2d 388, 398, 400-01, 692 N.W.2d 304, 309, 311 (while voiding body's action may grant complainant all the relief she seeks as an individual, it does not address the citizenry's interests in declaring the legality of official actions and potentially imposing forfeitures on the officials responsible).

5. Pleading format.

The normal pleading format is an action for a civil forfeiture brought on the relation of the attorney general, district attorney, corporation counsel or, where applicable, the person complaining. Wis. Stat. §§ 19.96, 19.97.

6. Time limit for filing suit.

The period of limitation is two years. Wis. Stat. § 893.93(2)(a).

7. What court.

The circuit court for the county where the violation occurred has jurisdiction. Wis. Stat. § 893.93(2).

8. Judicial remedies available.

The remedies are forfeiture, mandamus, injunction or declaratory judgment. Wis. Stat. §§ 19.96 and 19.97(2).

9. Availability of court costs and attorneys' fees.

When the district attorney (corporation counsel) has refused to sue, the prevailing party may receive "actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails." Wis. Stat. § 19.97(4). Attorney's fees are to be awarded if such an award would advance the purposes of the Open Meetings law

of enhancing public access to information about the affairs of government, unless special circumstances would make such an award unjust. *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

10. Fines.

The civil forfeiture is not less than $25 nor more than $300. Wis. Stat. § 19.96. These must be paid by the offending public officials who may not be reimbursed. *Crawford v. City of Ashland*, 134 Wis. 2d 369, 396 N.W.2d 781 (Wis. Ct. App. 1986).

D. Appealing initial court decisions.

Judicial review on appeal is de novo in the sense that "the trial judge should then make his determination of whether or not the harm likely to result to the public interest by permitting the inspection outweighs the benefit to be gained by granting inspection." *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 682, 137 N.W.2d 470, 475 (1965), *modified on reh'g*, 139 N.W.2d 241 (1966).

1. Appeal routes.

Appeal is to the court of appeals. Wis. Stat. § 808.03(1).

2. Time limits for filing appeals.

The time to appeal is 45 days from the entry of judgment if a written notice of entry is given within 25 days of entry or within 90 days of entry if no notice is given. Wis. Stat. § 808.04(1).

3. Contact of interested amici.

Amicus briefs may be filed if a request is filed within ten days after the respondent's brief is filed, *i.e.*, within 80 days after the record is filed in the appellate court. Wis. Stat. § 809.19(7). The brief need not be filed with the request and may be filed thereafter within the time specified by the court if the request to file an amicus brief is granted.

V. ASSERTING A RIGHT TO COMMENT.

This issue is addressed in Wisconsin's Administrative Procedure Act, Wis. Stat. §§ 227.01 - 227.60 (2003-04). Other specific statutes governing particular agencies and governmental bodies may have similar provisions. *See*, *e.g.*, Wis. Stat. § 119.12(8)(a) (2003-04) (Milwaukee School Board must hold a public hearing before adopting an annual budget).

A. Is there a right to participate in public meetings?

Under the Open Meetings Law, a governmental body is not required to permit public comment. However, "the public notice of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public." Wis. Stat. § 19.84(2). Members of the body may discuss, but not act on, matters raised by the public during the public comment period. Wis. Stat. § 19.83(2).

B. Must a commenter give notice of intentions to comment?

Commenter does not have to give notice, but the government is not required to permit it.

C. Can a public body limit comment?

Yes. Need not permit, can limit if do.

D. How can a participant assert rights to comment?

Not addressed in Wisconsin.

E. Are there sanctions for unapproved comment?

Not addressed in Wisconsin.

Appendix

Accident Reports, Boating — Wis. Stat. § 30.67(4)
Accident Reports, Motor Vehicle — Wis. Stat. § 349.19
Accidents, public utility reports — Wis. Stat. § 196.72(1)(b)
Adoption, birth certificates — Wis. Stat. § 69.20(2)(a)
Adoptions — Wis. Stat. § 48.93
Air pollution permit data revealing trade secrets — Wis. Stat. § 285.70(2)
Alcoholism patients involuntary commitment hearings and records — Wis. Stat. § 51.45(13)(f), (14)
Antitrust investigation records revealing trade secrets — Wis. Stat. § 133.13(2)
Arbitration records, Farm Mediation & Arbitration Board — Wis. Stat. § 93.50(2)(e)
Arson Investigation, information furnished by an insurer — Wis. Stat. § 165.55(14)
Artificial insemination — Wis. Stat. § 891.40(1)
Banking — Wis. Stat. §§ 220.035(1)(d), 220.06
Beverage/tobacco income/gift tax returns — Wis. Stat. § 139.11(4)
Bidder's proof of responsibility, municipal contracts — Wis. Stat. § 66.29(2)
Birth Control/Family Planning — Wis. Stat. § 253.07(3)(c)
Birth parent — Wis. Stat. § 48.432(4)(f) & (g)
Birth parent — Wis. Stat. § 48.433
Blood specimens — Wis. Stat. § 346.71(2)
Blood specimens — Wis. Stat. § 350.155(2)
Burial sites — Wis. Stat. § 157.70(2)
Campaign fund designation — Wis. Stat. § 71.10(3)
Cancer reporting — Wis. Stat. § 255.04
Cancer statistics — Wis. Stat. § 140.05(11)
Children's Court Advisory Board records — Wis. Stat. § 48.11(2)
Children's Records: Abused or neglected children — Wis. Stat. § 48.981(7), (9)(d) & (10)(a)1
Child Welfare agency records — Wis. Stat. § 48.78
Civil Service — Wis. Stat. § 230.13 (date) [see § 546 of] Act 225
Communicable Diseases — Wis. Stat. § 252.11(7)
Competency report and hearing — Wis. Stat. § 971.14(4)
Concealed carry records — Wis. Stat. § 175.60(12)(c)
Contractor's payroll records — Wis. Stat. § 66.293(10)(c)
Controlled substances research — Wis. Stat. § 961.335
Credit Union — Wis. Stat. § 186.235(7)
CUB records — Wis. Stat. § 199.07(5)
Dairy license financial information — Wis. Stat. § 100.06(1)(c)
Depositions in criminal proceedings — Wis. Stat. § 967.04(8)(a)
Disability Board proceedings — Wis. Stat. § 17.025(3)(b)
Discovery in Juvenile matters — Wis. Stat. § 48.293(2)
Elder abuse records — Wis. Stat. § 46.90
Employee identity — Wis. Stat. § 230.82(4)
Employment — Wis. Stat. § 103.13(2)
Energy alert info — Wis. Stat. § 16.955(2)
Ethics Board — Wis. Stat. § 19.55
Ethics Board — Wis. Stat. § 19.59(3)(d)
Evidence — Wis. Stat. § 165.79
Expunged youthful records — Wis. Stat. § 973.015
Fertilizer solid — Wis. Stat. § 94.64(5)
Financial info (family actions) — Wis. Stat. § 767.27(3)
Food processing plant financial statement — Wis. Stat. § 100.03(3)(f)
Geologic exploration — Wis. Stat. § 107.15(4)(f)
Ginseng records — Wis. Stat. § 94.50(6)
Ginseng reports — Wis. Stat. § 29.547(9)(g)
Grand Jury transcripts — Wis. Stat. § 756.145(2)
HIV test results — Wis. Stat. § 252.15(5)
Heal Estate transfer returns — Wis. Stat. § 77.23
Health/personal records — Wis. Stat. § 50.09(1)(f)(3)
Income and Gift tax returns — Wis. Stat. § 139.38(6)
Income and Gift tax returns — Wis. Stat. § 139.82(6)
Income Tax — Wis. Stat. § 71.78
Incompetency — Wis. Stat. § 55.06(17)
Incompetency — Wis. Stat. § 880.33(6)

Induced abortion reporting — Wis. Stat. § 69.186
Informants identities, natural resources law violations — Wis. Stat. § 23.38(2)
Informants identities, evidentiary privilege — Wis. Stat. § 905.10
Insurance rehab proceedings — Wis. Stat. § 645.24(3)
Insurance security fund — Wis. Stat. § 646.12(2)(e)
Interception of wire or oral communication — Wis. Stat. § 968.30(7)(b), (9)(b)(2)
John Doe proceeding — Wis. Stat. § 968.26
Jury note-taking — Wis. Stat. § 805.13(2)(a)(1)
Jury note-taking — Wis. Stat. § 972.10(1)(a)1.
Juvenile — Wis. Stat. § 343.24(3)
Juvenile Licenses — Wis. Stat. § 343.30(5)
Juvenile police records — Wis. Stat. § 48.396
Laboratory certification — Wis. Stat. § 299.11(7)(b)(3)
Law Enforcement — Wis. Stat. § 905.09
Legislative Audit Bureau audits — Wis. Stat. § 13.94
Legislative Counsel Staff requests — Wis. Stat. § 13.91
Legislative drafting requests — Wis. Stat. § 13.92(1)(c)
Legislative fiscal bureau — Wis. Stat. § 13.95
Marriage license — Wis. Stat. § 765.002(4)
Medical Assistance — Wis. Stat. § 49-45(4)
Mental Health — Wis. Stat. § 51.30
Military separation — Wis. Stat. § 45.38(2)
Mining statement — Wis. Stat. § 107.02
Motor vehicle info — Wis. Stat. § 343.16(2)(c) & (d)
Natural heritage inventory — Wis. Stat. § 23.27(3)
Nursing Home/CBRF — Wis. Stat. § 50.03(2)(e)
Pardon application papers, victims statement — Wis. Stat. §§ 304.06 and 304.15
Parents — Wis. Stat. § 49.22(2) & (4)
Paternity hearings — Wis. Stat. § 767.53
Patient Heath Care — Wis. Stat. § 146.82
Patients compensation panel — Wis. Stat. § 655.27(4)(b)
Peer review, health care providers — Wis. Stat. § 146.38
Personnel Board — Wis. Stat. § 230.07(1)
Personnel Commission — Wis. Stat. § 230.45
Personnel examinations — Wis. Stat. § 230.16(11)
Pesticide formulas — Wis. Stat. § 94.70(3)(b)
Pesticide licenses — Wis. Stat. § 94.68(4)
Physical exam information — Wis. Stat. § 118.25(2)(c)
Physical exam of defendant — Wis. Stat. § 971.16(2)
Presentence reports — Wis. Stat. § 972.15(4)
Prospecting data — Wis. Stat. § 293.47(3)(b)
Protective orders in depositions and discovery — Wis. Stat. § 804.01(3)
Public Assistance — Wis. Stat. § 49.53
Public Assistance recipients' bill of rights — Wis. Stat. § 49.001
Public building plans — Wis. Stat. § 101.12(5)(b), (c)
Public defender files — Wis. Stat. § 977.09
Public depository information — Wis. Stat. § 34.03(2)
Public Employee Trust Fund — Wis. Stat. § 40.07
Public Library circulation — Wis. Stat. § 43.30
Pupil communication re alcohol/drugs — Wis. Stat. § 118.126(1)
Pupil records — Wis. Stat. § 118.125
Purchase of vegetable crop reports — Wis. Stat. § 100.235(2)
Record of secret inquest — Wis. Stat. § 979.08(7)
Report of county taxes — Wis. Stat. § 77.76(3)
Revocation of alcohol license — Wis. Stat. § 125.07(4)(cm)
Room tax, forfeitures — Wis. Stat. § 66.75(3)
Sales Tax — Wis. Stat. § 77.61(5)
Savings & Loan Assoc banking examination — Wis. Stat. § 220.06(1)
Savings & Loan Associations — Wis. Stat. § 215.26(8)
Savings & Loan Commissioner — Wis. Stat. § 215.02(6)
Search Warrant — Wis. Stat. § 965.21
Search Warrant, premature disclosure — Wis. Stat. § 946.76
Securities Commissioner — Wis. Stat. § 551.51(2)
Snowmobile accident reports confidential — Wis. Stat. § 350.15(4)
Solid Waste facility, competitively sensitive data — Wis. Stat. § 289.09
Solid Waste, hazardous waste facility, competitively sensitive data — Wis. Stat. § 291.15(2)(a)
Solid Waste recycling authority — Wis. Stat. § 332.42
Tax Returns — Wis. Stat. § 70.35
Tax Returns — Wis. Stat. § 72.06
Tax Returns — Wis. Stat. § 78.80(3)
Tests for metabolic disorders — Wis. Stat. § 146.02(4)
Toxic substances — Wis. Stat. § 101.592
Trade Secrets — Wis. Stat. § 227.46(7)
Trade Secrets — Wis. Stat. § 905.08
Treatment records — Wis. Stat. § 51.61(1)(n)
Veterans Administration — Wis. Stat. § 45.36(3), (4) & (6)
Victim Compensation — Wis. Stat. § 949.16
Victims of Crimes proceeding — Wis. Stat. § 949.12
Vital records — Wis. Stat. § 69.20
Vocational Rehabilitation — Wis. Stat. § 47.40(13)(a)
Vocational rehabilitation information — Wis. Stat. § 47.02(7)
Warehouse keeper financial statements — Wis. Stat. § 127.06(2)(b)
Water pollution records, trade secret information— Wis. Stat. §§ 283.43, 283.55(2)(c)
Welfare Services — Wis. Stat. § 46.206
Wills — Wis. Stat. § 853.09(2)

Statute

Open Records

Wisc. Stat. § 19.31 et seq.

Wisconsin Statutes

19.31. Declaration of policy

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

19.32. Definitions

As used in ss. 19.33 to 19.39:

(1) "Authority" means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, 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; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.

(1b) "Committed person" means a person who is committed under ch. 51, 971, 975 or 980 and who is placed in an inpatient treatment facility, during the period that the person's placement in the inpatient treatment facility continues.

(1bg) "Employee" means any individual who is employed by an authority, other than an individual holding local public office or a state public office, or any individual who is employed by an employer other than an authority.

(1c) "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09(4) as a condition of placement, during the period of confinement for which the person has been sentenced.

(1d) "Inpatient treatment facility" means any of the following:

(a) A mental health institute, as defined in s. 51.01 (12).

(c) A facility or unit for the institutional care of sexually violent persons specified under s. 980.065.

(d) The Milwaukee county mental health complex established under s. 51.08.

(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, but does not include any office or position filled by a municipal employee, as defined in s. 111.70(1)(i).

(1e) "Penal facility" means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

(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 child, as defined in s. 48.02(2), the guardian of an individual adjudicated incompetent in this state, the personal representative or spouse of an individual who is deceased, or any person authorized, in writing, by the individual to exercise the rights granted under this section.

(1r) "Personally identifiable information" has the meaning specified in s. 19.62(5).

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

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

(3) "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

(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)(f) to (gm).

19.33. Legal custodians

(1) An elected 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 officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) The co-chairpersons of a joint committee of elected officials, or the designee of the co-chairpersons, are the legal custodians of the records of the joint committee.

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employee of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employees of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35(4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

(8) No elected 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.

19.34. Procedural information

(1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office or a state public office. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2)(a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

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.

19.35. Access to records; fees

(1) Right to inspection.

(a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

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

1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

2. Any record containing personally identifiable information that, if disclosed, would do any of the following:

a. Endanger an individual's life or safety.

b. Identify a confidential informant.

c. Endanger the security, including the security of the population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85(2)(bg), juvenile correctional facility, as defined in s. 938.02(10 p), secured residential care center for children and youth, as defined in s. 938.02(15g), mental health institute, as defined in s. 51.01(12), center for the developmentally disabled, as defined in s. 51.01(3), or facility, specified under s. 980.065, for the institutional care of sexually violent persons.

d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility identified in subd. 2. c.

3. Any record that is part of a records series, as defined in s. 19.62(7), that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record which appears in written form. If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

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

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

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the form of a voice recording which the authority is required to withhold or from which the authority is required to delete information under s. 19.36(8)(b) because the handwriting or the recorded voice would identify an informant, the authority shall provide to the requester, upon his or her request, a transcript of the record or the information contained in the record if the record or information is otherwise subject to public inspection and copying under this subsection.

(f) Except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (b) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3)(f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (am), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36(6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

(2) Facilities. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1)(a), (am), (b) or (f) with facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) Fees.

(a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is $50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds $5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

(g) Notwithstanding par. (a), if a record is produced or collected by a person who is not an authority pursuant to a contract entered into by that person with an authority, the authorized fees for obtaining a copy of the record may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record incurred by the person who makes the reproduction or transcription, unless a fee is otherwise established or authorized to be established by law.

(4) Time for compliance and procedures.

(a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney.

(c) If an authority receives a request under sub. (1)(a) or (am) from an individual or person authorized by the individual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information pertaining to the individual that is maintained by the authority, the authority shall deny or grant the request in accordance with the following procedure:

1. The authority shall first determine if the requester has a right to inspect or copy the record under sub. (1)(a).

2. If the authority determines that the requester has a right to inspect or copy the record under sub. (1)(a), the authority shall grant the request.

3. If the authority determines that the requester does not have a right to inspect or copy the record under sub. (1)(a), the authority shall then determine if the requester has a right to inspect or copy the record under sub. (1)(am) and grant or deny the request accordingly.

(5) Record destruction. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under s. 19.37, the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

(6) Elected official responsibilities. No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official.

(7) Local information technology authority responsibility for law enforcement records.

(a) In this subsection:

1. "Law enforcement agency" has the meaning given s.165.83(1)(b).

2. "Law enforcement record" means a record that is created or received by a law enforcement agency and that relates to an investigation conducted by a law enforcement agency or a request for a law enforcement agency to provide law enforcement services.

3. "Local information technology authority" means a local public office or local governmental unit whose primary function is information storage, information technology processing, or other information technology usage.

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

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

19.356. Notice to record subject; right of action

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

(2)(a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or by personally serving the notice on the record 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). This paragraph applies only to the following records:

1. A record containing information relating to an employee that is created or kept by the authority and that is the 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.

2. A record obtained by the authority through a subpoena or search warrant.

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.

(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) Within 5 days after receipt of a notice under sub. (2)(a), a 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.

(4) Within 10 days after receipt of a notice under sub. (2)(a), a 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. Notwithstanding s. 803.09, the requester may intervene in the action as a matter of right. If the requester does not intervene in the action, the authority shall notify the requester of the results of the proceedings under this subsection and sub. (5).

(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)(a). 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.

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

(7) The court, in an action commenced under sub. (4), shall issue a decision within 10 days after the filing of the summons and complaint and proof of service of the summons and complaint upon the defendant, unless a party demonstrates cause for extension of this period. In any event, the court shall issue a decision within 30 days after those filings are complete.

(8) If a party appeals a decision of the court under sub. (7), the court of appeals shall grant precedence to the appeal over all other matters not accorded similar precedence by law. An appeal shall be taken within the time period specified in s. 808.04(1m).

(9)(a) Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office or a state public office, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under par. (b).

(b) Within 5 days after receipt of a notice under par. (a), a record subject may augment the record to be released with written comments and documentation selected by the record subject. Except as otherwise authorized or required by statute, the authority under par. (a) shall release the record as augmented by the record subject.

19.36. Limitations upon access and withholding

(1) Application of other laws. Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35(1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).

(2) Law enforcement records. Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35(1).

(3) Contractors' records. Subject to sub. (12), each authority shall make available for inspection and copying under s. 19.35(1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority. This subsection does not apply to the inspection or copying of a record under s. 19.35(1)(am).

(4) Computer programs and data. A computer program, as defined in s. 16.971(4)(c), is not subject to examination or copying under s. 19.35(1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) Trade secrets. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90(1)(c).

(6) Separation of information. If a record contains information that is subject to disclosure under s. 19.35(1)(a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.

(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 or position, each of the 5 candidates who are considered most qualified for the office or 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.

(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.

(8) Identities of law enforcement informants.

(a) In this subsection:

1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement agency or under circumstances in which a promise of confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.

b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.

2. "Law enforcement agency" has the meaning given in s. 165.83(1)(b), and includes the department of corrections.

(b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under s. 19.35(1)(a) that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the public

interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

(9) Records of plans or specifications for state buildings. Records containing plans or specifications for any state-owned or state-leased building, structure or facility or any proposed state-owned or state-leased building, structure or facility are not subject to the right of inspection or copying under s. 19.35(1) except as the department of administration otherwise provides by rule.

(10) Employee personnel records. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35(1) to records containing the following information, except to an employee or the employee's 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 under ch. 111 or pursuant to a collective bargaining agreement under ch. 111:

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

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

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

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

(11) Records of an individual holding a local public office or a state public office. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35(1) to records, except to an individual to the extent required under s. 103.13, containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local public office or a state public office, unless the individual authorizes the authority to provide access to such information. This subsection does not apply to the home address of an individual who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

(12) Information relating to certain employees. Unless access is specifically authorized or required by statute, an authority shall not provide access to a record prepared or provided by an employer performing work on a project to which s. 66.0903, 66.0904, 103.49, or 103.50 applies, or on which the employer is otherwise required to pay prevailing wages, if that record contains the name or other personally identifiable information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information. In this subsection, "personally identifiable information" does not include an employee's work classification, hours of work, or wage or benefit payments received for work on such a project.

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

19.365. Rights of data subject to challenge; authority corrections

(1) Except as provided under sub. (2), an individual or person authorized by the individual may challenge the accuracy of a record containing personally identifiable information pertaining to the individual that is maintained by an authority if the individual is authorized to inspect the record under s. 19.35(1) (a) or (am) and the individual notifies the authority, in writing, of the challenge. After receiving the notice, the authority shall do one of the following:

(a) Concur with the challenge and correct the information.

(b) Deny the challenge, notify the individual or person authorized by the individual of the denial and allow the individual or person authorized by the individual to file a concise statement setting forth the reasons for the individual's disagreement with the disputed portion of the record. A state authority that denies a challenge shall also notify the individual or person authorized by the individual of the reasons for the denial.

(2) This section does not apply to any of the following records:

(a) Any record transferred to an archival depository under s. 16.61(13).

(b) Any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy of the record.

19.37. Enforcement and penalties

(1) Mandamus. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(1m) Time for commencing action. No action for mandamus under sub. (1) to challenge the denial of a request for access to a record or part of a record may be commenced by any committed or incarcerated person later than 90 days after the date that the request is denied by the authority having custody of the record or part of the record.

(1n) Notice of claim. Sections 893.80 and 893.82 do not apply to actions commenced under this section.

(2) Costs, fees, and damages.

(a) Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than $100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1)(a). If the requester is a committed or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) In any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35(1)(am), if the court finds that the authority acted in a willful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.

(3) Punitive damages. If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester.

(4) Penalty. Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required to forfeit not more than $1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

19.39. Interpretation by attorney general

Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

Open Meetings

Wisc. Stat. § 19.81 et seq.

19.81. Declaration of policy

(1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

19.82. Definitions

As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, 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; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV or V of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50(6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77(5)(k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065(5)(a).

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13(1).

19.83. Meetings of governmental bodies

(1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

19.84. Public notice

(1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any university of Wisconsin system institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

19.85. Exemptions

(1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests than an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70(1)(b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05(6a), or from any county or municipal ethics board under s. 19.59(5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV or V of ch. 111 which has been negotiated by such body or on its behalf.

19.851 Closed sessions by government accountability board.

The government accountability board shall hold each meeting of the board for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the ethics and accountability division of the board in closed session under this section. Prior to convening under this section, the government accountability board shall vote to convene in closed session in the manner provided in s. 19.85(1). No business may be conducted by the government accountability board at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85(1).

19.86. Notice of collective bargaining negotiations

Notwithstanding s. 19.82(1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84(1)(b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

19.87. Legislative meetings

This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78(4)(c) or 77.61(5)(b)3. shall be closed to the public.

19.88. Ballots, votes and records

(1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

19.89. Exclusion of members

No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

19.90. Use of equipment in open session

Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

19.96. Penalty

Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than $25 nor more than $300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

19.97. Enforcement

(1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

19.98. Interpretation by attorney general

Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.