UW Extension Local Government Center

FACT SHEET

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The Wisconsin Public Records Law
Secs. 19.21-19.39, Wisconsin Statutes

Policy of Access

Local governments keep a variety of records dealing with citizens, businesses, and government activities. To further the goal of having an informed public, the state's policy is to give the public "the greatest possible information regarding the affairs of government...." Sec. 19.31. Accordingly, the public records law, secs. 19.32-19.37, must "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." The statute further provides that "denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."

What Is a Public Record?

A public record is a "record" of an "authority."

Items covered. A "record" is broadly defined as "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" (defined below). Sec. 19.32(2). The term "record" includes written materials, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.

Items not covered. The term "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…" This exception is narrowly interpreted. If a draft or other preliminary document is used as if it were a final document, it is not excluded from the definition of record. *Fox v. Bock*, 149 Wis. 2d 403 (1989); 77 *Op. Att'y Gen*. 100 (1988). Therefore a "draft" report used to determine policy and notes circulated outside the chain of the originator's supervision, as well as notes used to memorialize a governmental body's activity, are records under the law.

"Record" does not include materials that are the personal property of the custodian and do not relate to the custodian's office.

Materials to which access is limited by copyright, patent or bequest are not public records. Likewise, published materials of an authority available for sale and published materials available for inspection in a public library are not records.

"***Authority***." This term is broadly defined in the law to include state and local offices, elected officials, agencies, boards, commissions, committees, councils, departments and public bodies created by the constitution, statutes, ordinances, rules or orders. Sec. 19.32(1). Local governing bodies, offices, elected officials and their committees, boards, and commissions are covered. "Authority" also includes governmental corporations; quasi-governmental corporations; a local exposition district; a family care district; any court of law; and nonprofit corporations that receive more than 50% of their funds from a county, city, village or town and provide services related to public health or safety to those units. Finally, subunits of the above are also authorities.

Management & Destruction of Records; Requested Records

Every public officer is the legal custodian of the records of his or her office. Sec. 19.21. The statutes provide standards for retaining records and also provide procedures and timetables for transferring obsolete records to the Wisconsin Historical Society or destroying them. Tape recordings of meetings of local governmental bodies made solely for the purpose of making minutes may not be destroyed sooner than 90 days after the minutes of the meeting have been approved and published (if the body publishes its minutes). Sec. 19.21(7). In contrast, the tapes of board of review proceedings, which are made to create a record, must be kept at least 7 years. Sec. 70.47(8)(f).

The otherwise legal destruction of records cannot be used to undermine a person's public records request. No record may be destroyed until after a request to copy or inspect has been granted, or until at least 60 days after the date of denial of such request (90 days in the case of a request by a committed or incarcerated person). Sec. 19.35(5). The right to destroy a record is also stayed if access to the records is being litigated. Information on public records management and destruction may be found on the websites of the Wisconsin Historical Society and the Public Records Board of the Department of Administration. Go to http://www.wisconsinhistory.org/ and enter Local Government Records Program in the search box. This links to the *Wisconsin Municipal Records Manual.* At http://www.doa.state.wi.us/ , enter Public Records Board.

What Is a Local Public Office?

This term is used in public records law provisions concerning an authority's posting requirement and a requester's right of access to job applications and to other records with personally identifiable information. "Local public office" covers elected officers of local governmental units; a county administrator or administrative coordinator or a city or village manager; appointed local officers and employees who serve for a specified term; and officers and employees appointed by the local governing body or executive or administrative head who serve at the pleasure of the appointing authority. Sec. 19.32(1dm). The term also includes appointed offices or positions in which an individual serves as head of a department, agency or division of the local governmental unit.

The term does not include independent contractors; persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers; and persons appointed for indefinite terms who are removable for cause. Nor does the term include any "municipal employee" as defined under the municipal employment relations law, sec. 111.70(1)(i).

The public records provisions on posting and personally identifiable information also apply to a "state public official." Sec. 19.32(4). This term includes a municipal judge.

Legal Custodians

In general. The legal custodian maintains public records and has the duty to make decisions regarding access to the records. Secs. 19.21 and 19.33. Specific statutes outside of the Public Records Law may establish record-keeping duties. For example, local clerks are designated as records custodians.

Elected officials. The Public Records Law provides in general that elected officials are the custodians of the records of their offices, unless they have designated an employee of their staff to act as custodian. Chairpersons and cochairpersons of committees and joint committees of elected officials, or their designees, are the custodians.

Other custodians; designation. If one authority (other than an elected official, or committee or joint committee of elected officials, above) appoints another authority or provides administrative services for the other authority, the "parent" authority may designate the legal custodian for such other authority.

State and local authorities (other than elected officials and their committees and joint committees, above) under the public records law must designate custodians in writing and provide their names and a description of their duties to employees entrusted with records under the custodian. If the statutes do not designate a custodian and the authority has not designated one, the highest ranking officer and the chief administrative officer, if any, are the authority's custodian. An authority or legal custodian (other than members of local governmental bodies) must designate a deputy legal custodian to respond to requests for records maintained in a public building.

Records in a public building. The legal custodian of records kept in a public building must designate one or more deputies to act in his or her absence. This requirement does not apply to members of any local governmental body.

Office Hours & Facilities

Posted notice required. Sec. 19.34(1). Each authority must adopt and prominently display a notice describing its organization, the times and locations at which records may be inspected, the identity of the legal custodian, the methods to request access to or copies of records and the costs for copies. Sec. 19.34(1). If the authority does not have regular office hours at the location where records are kept, its notice must state what advance notice is required, if any, to inspect or copy a record. Sec. 19.34(2)(c). A new requirement specifies that the posted notice must also "identify each position of the authority that constitutes a local public office or a state public office"(see definition above).

The posting requirement, however, does not apply to members of the legislature or to members of any local governmental body.

Hours. Sec. 19.34(2). An authority with regular office hours must, during those hours, permit access to its records kept at that office, unless otherwise specified by law. If the authority does not have regular office hours at the location where the records are kept, it must permit access upon 48 hours' written or oral notice. Alternatively, an authority without regular hours at the location where records are kept may establish a period of at least 2 consecutive hours per week for public access to records, and may require 24 hours' advance written or oral notice of intent to inspect or copy a record within the established access period. (*Note*: In computing the hours required for notice, Saturdays, Sundays and legal holidays are excluded. Sec. 19.345.)

If a record is sometimes taken from the location where it is regularly kept, and inspection is allowed at the location where the record is regularly kept upon one business day's notice, inspection does not have to be allowed at the occasional location.

Facilities. Sec. 19.35(2). The authority must provide a person who is allowed to inspect or copy a record with facilities comparable to those used by its employees to inspect, copy and abstract records during established office hours. The authority is not required to provide extra equipment or a separate room for public access. The authority has the choice of allowing the requester to photocopy the record or providing a copy itself. Sec. 19.35(1)(b). The custodian may refuse to allow the requester to use his or her own photocopier to copy the record in order to protect the original. *Grebner v. Schiebel*, 240 Wis.2d 551 (Ct. App. 2001).

Priority & Sufficiency of Request

Response to a public record request is a part of the regular work of the office. An authority must "as soon as practicable and without delay" fill a public records request or notify the requester of the decision to deny the request in whole or in part, and the reasons for that decision. Sec. 19.35(4). In some cases, the custodian may delay the release of records to consult legal counsel. Specified time periods apply for giving notice of the intended release of certain records containing personally identifiable information on employees and on individuals who hold public office (below).

A request must reasonably describe the record or information requested. Sec. 19.35(1)(h). A request is insufficient if it has no reasonable limitation as to subject matter or length of time represented by the request. For example, a request for a copy of 180 hours of audio tape of 911 calls with a transcription of the tape and log for each transmission was a request without reasonable limitation that may be denied. *Schopper v Gehring*, 210 Wis. 2d 209 (Ct. App. 1997).

Form of Request & Response; Separation of Information

A request may be either oral or written. Sec. 19.35(1)(h). If a mailed request asks that records be sent by mail, the authority cannot require the requester to come in and inspect the records, but must mail a copy of the requested record, assuming that it must be released and any required prepayment of fees (see below) has been made. Sec. 19.35(1)(i).

A request that is granted seldom presents a problem. Denials of requests, however, must be made in accordance with legal requirements. An oral request may be denied orally, unless a demand for a written reply is made by the requester within five business days of the oral denial. Sec. 19.35(4)(b).

The request must be in writing before an action to seek a court order or a forfeiture may be started. A written request must receive a written denial stating the reasons for the denial and informing the requester that he or she may file a "mandamus" action (or request the district attorney or attorney general to file such action) in the local circuit court seeking review of the custodian's determination and an order to release the record (see "Enforcement and Penalties" below). Sec. 19.35 (4)(b).

If a record contains both information that is subject to disclosure and information that is not, the information that may be disclosed must be provided and the confidential information deleted. Sec. 19.36(6).

Form of Record

Photocopies. Many requested records can be photocopied. The authority may either provide a photocopy of such record to the requester or allow the requester to make the copy (as noted above under "Facilities"). Sec. 19.35(1)(b). If the form of the record does not permit photocopying, the requester may inspect the record and the authority may permit the requester to photograph the record. Sec. 19.35(1)(f). If requested, the authority must provide a photograph.

Tapes. For audiotapes, the authority may provide a tape copy or a transcript, if the requester so requests. Sec. 19.35(1)(c). When an audiotape or handwritten record would reveal an informer's identity, the authority must provide a transcript, if the record is otherwise subject to inspection. Sec. 19.35(1)(em).

A requester has a right to a videotape copy of a record that is a videotape. Sec. 19.35(1)(d).

Putting records in comprehensible forms. If the record is in a form not readily comprehensible, the requester has the right to information assembled and reduced to written form, unless otherwise provided by law. Sec. 19.35(1)e). Except to put an existing record in comprehensible form, the authority has no duty to create a new record by extracting and compiling information. Sec. 19.35(1)(L). However, the custodian does have to separate information that may be disclosed from that which is being withheld. Sec. 19.36(6).

Published records; restrictions on access. A record (other than a videotape) that has been published or will be promptly published and available for sale or distribution need not be otherwise offered for public access. Sec. 19.35(1)(g). *Note* that the definition of "record," above, does not include published materials of an authority available for sale and published materials available for inspection at a public library. Sec. 19.32(2)

Reasonable restrictions on access may be placed to protect irreplaceable or easily damaged original records. Sec. 19.35(1)(k).

What Fees May Be Charged?

Fees that do not exceed the "actual, necessary and direct" cost of copying, photographing or transcribing a record and mailing or shipping it may be charged to a requester of public records, unless another fee is set by law. Sec. 19.35(3). The authority may reduce or waive fees if that is in the public interest. A limit of twenty-five cents per page of photocopy is a good rule-of-thumb, unless a statute provides otherwise or higher costs can be justified. A copy fee may include a charge for the time it takes a clerical worker to copy the records on a copy machine. 72 *Op. Att'y Gen*. 150 (1983). Costs associated with locating a record may be passed on to the requester only if the location costs are $50 or more.

Prepayment of fees may be required only if the fee exceeds $5. However, if the requester is a prisoner who has failed to pay any fee for a previous request, the authority may require prepayment of both the previous and current fee. The cost of a computer run may be imposed as a copying fee, but not as a location fee. 72 *Op. Att'y Gen*. 68 (1983). The cost of separating confidential parts of a record from the parts to be released may not be charged. 72 *Op. Att'y Gen*. 99 (1983).

Inspection of Public Records

Any requester has a right to examine a public record, unless access is withheld according to law. As noted above, the presumption is that public records are open. Access to a public record, in accordance with secs. 19.35(1)(a) and 19.36(1), may be denied when:

- a state or federal law exempts the record from disclosure.
- a limitation on access has been established by the courts. This is known as a common law exemption.

- the harm to the public interest from disclosure outweighs the public interest in inspection. This requires the custodian to perform the "balancing test" (below), often with the advice of legal counsel. The balancing test is also a common law doctrine.

Limitations on Access under the Common Law; the Balancing Test

The statute provides that common law principles (i.e., the law developed in published court decisions) on the right of access to records remain in effect. Sec. 19.35(1)(a). For example, the common law provides an exception to public access to a district attorney's prosecution files. *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, *recon. den'd*, 165 Wis. 2d 429 (1991). Most importantly, the common law has created the concept of the balancing test (below) to weigh the competing public interests in making the disclosure decision.

The balancing test. Often no statutory provision or common law ruling answers the question of whether access to a public record may be denied. When the custodian has some doubt about whether to release the record, the balancing test must be performed. Under the common law, public records may be withheld only when the public interest in nondisclosure outweighs the public interest in disclosure. Sec. 19.35(1)(a). *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683 (1965). The reasons for nondisclosure must be strong enough to outweigh the strong presumption of access. *Matter of Estates v. Zimmer*, 151 Wis. 2d 122 (Ct. App. 1989). The custodian must state specific policy reasons for denying access; a mere statement of legal conclusion is inadequate. *Village of Butler v. Cohen*, 163 Wis. 2d 819 (Ct. App. 1991). In explaining the denial, it may be helpful to cite statutory provisions (such as the following, if applicable) that indicate a public policy to deny access, even if these provisions do not specifically answer the access question.

Before refusing a request in an unclear situation, or granting a request that may invade a person's privacy or damage a person's reputation, the custodian should consult the county corporation counsel or municipal attorney. The office of the attorney general may also be consulted (see final heading). With the enactment of legislation on personally identifiable information in 2003 (below), the law is clearer than it was before on these matters.

Using open meetings law exemptions in the balancing test. The statutory exemptions under which a governmental body may meet in closed session under sec. 19.85(1) of the open meetings law indicate public policy, but the custodian must still engage in the balancing test and may not merely cite such an exemption to justify nondisclosure. Sec. 19.35(1)(a); *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480 (Ct. App. 1985).

These exemptions include the following: deliberating concerning a quasi-judicial case; considering dismissal, demotion, licensing or discipline of a public employee; considering employment, promotion, compensation or performance evaluation of a public employee; considering crime prevention or crime detection strategies; engaging in public business when competitive or bargaining reasons require closure; considering financial, medical, social or personal histories or disciplinary information on specific persons which would be likely to have a substantially adverse effect on the person's reputation if disclosed; and conferring with legal counsel for a governmental body on strategy for likely litigation.

Examples of Statutory Limitations on Access

Records requested by prisoners & committed persons. Sec. 19.32. The definition of "requester" itself results in a limitation on access. "Requester" does not include any person who is "committed" or "incarcerated" unless the person requests inspection or copies of a record that contains specific references to that person or to his or her minor children if the physical placement of the children has not been denied to the person. Release of records to a committed or incarcerated person is, of course, subject to records that are otherwise accessible under the law.

Certain law enforcement investigative records. 19.36(2). Access to these records is limited where federal law, as a condition for receipt of aid, provides limitations.

Computer programs; trade secrets. Sec. 19.35(4) and (5). The computer program itself is not subject to inspection and copying, although the information used as input is, subject to any other applicable limitations.

Identities of applicants for public positions. Sec. 19.36(7). Records that would reveal the identities of job applicants must be kept confidential if the applicants so request in writing. However, the identities of

"final candidates" to "local public office" may not be withheld. A final candidate is one who is one of the 5 most qualified applicants, or a member of the final pool if that is larger than 5. If there are fewer than 5 candidates, each one is a final candidate.

Identities of law enforcement informants. Sec. 19.36(8). Information that would identify a confidential informant must be deleted before a requester may have access to the record.

Employee personnel records & records of public officers (see below). Sec. 19.36(10)-(12).

Ambulance records. Sec. 146.50(12). Records made by emergency medical technicians and ambulance service providers are confidential patient health care records, although certain information on the run is open to inspection.

Patient health care records. Secs. 146.81-146.84.

Law enforcement officers' records of children & adult expectant mothers. Secs. 48.396 and 938.396.

Public library user records. Sec. 43.30(1).

Certain assessment records. *Personal property tax returns* are confidential, except that they are available for use before the board of review. Sec. 70.35(3). *Property tax income and expense information*, used in property valuation under the income method, are confidential. Sec. 70.47(7)(af). *Real estate transfer returns* are also confidential, with specified exceptions. Sec. 77.265.

Personnel files. Sec. 103.13. An employer (whether a government or non-government employer) must allow an employee to inspect his or her personnel documents, at least twice a year, within 7 working days after making the request. The employee may submit a statement for the file that disputes information in it, if the employee and employer cannot agree to a correction. The statement must be attached to the disputed portion of the record and included with the record when released to a 3rd party. Exceptions to the employee's right to inspect include the following records: investigations of possible criminal offenses; letters of reference; test documents, other than section or total scores; staff management planning materials, including recommendations for future salary increases and other wage treatments, management bonus plans, promotions and job assignments, and other comments and ratings; personal information that would be a "clearly unwarranted invasion" of another person's privacy; and records relevant to a pending claim in a judicial proceeding between the employee and employer.

Personally Identifiable Information

Introduction. The legislature in its 1991 session created provisions in the public records law to help preserve the privacy of individuals. Generally, a person who is the subject of a record with personally identifiable information has greater access to that record than is otherwise available under the public records law and may seek corrections to the information contained in the record. The 1991 legislation also created a subchapter on "personal information practices."

The section following this one covers important recent legislation designed to provide clarification on access to certain records containing personally identifiable information, primarily in the records of employees and local public officers.

Definitions. Sec. 19.32. "Personally identifiable information" means "information that can be associated with a particular individual through one or more identifiers or other information or circumstances." Secs. 19.32(1r) and 19.62(5). (See the following exceptions for what this term does not include.) A "person authorized by the individual" means a person authorized in writing by the individual or the individual's parent, guardian, legal custodian, or the personal representative or spouse of a deceased person. Sec. 19.32(1m).

Right to inspect; exceptions. Sec. 19.35(1)(am). In addition to a requester's general right to inspect public records under sec. 19.35(1)(a)(above), a requester, or a person authorized by that individual, has the right to inspect and copy any record containing personally identifiable information pertaining to the individual that is maintained by an authority. However, this right of access does *not* include the following records:

1. Investigations, etc. Any record with information 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 record collected or maintained in connection with any such action or proceeding.

2. Security issues. Any record with personally identifiable information that, if disclosed, would

a. endanger an individual's life or safety;

b. identify a confidential informant;

c. endanger the security of specified facilities and institutions, including correctional, mental health and other secured facilities, a center for the developmentally disabled and a facility for the care of sexually violent persons; or

d. compromise the rehabilitation of a person incarcerated or detained in one of the facilities in c.

3. Record series. Any record which is part of a record series, as defined in sec. 19.62(7), that is not indexed or arranged so that the authority can retrieve it by use of an individual's name, address or other identifier.

Contractors' records. Sec. 19.36(3) and (12). The general right to access records of a contractor produced under a contract with an authority under sec. 19.36(3) does not apply to personally identifiable information. Such information on an employee of a contracting employer subject to the prevailing wage law cannot generally be accessed, except information on employee work classification, hours of work and wage or benefit payment information may be released.

Responding to requests. Sec. 19.35(4)(c). The authority must follow a specific procedure when it receives a request from an individual or a person authorized by the individual who states that the purpose of the request is to inspect or copy a record with personally identifiable information on the individual. In these cases the requester generally has a right to inspect and copy a record. Sec. 19.35(1)(am). However, this right does not extend to a number of situations and records (see "Applicability" and "Contractors' records" above).

The authority must first determine whether the requester has a right, under the general public records law, to inspect or copy the record with personally identifiable information. If the requester has such a right, the authority must grant the request. This determination may involve the balancing test (above). If the authority determines that the requester does not have the right to inspect or copy the record under the general public records law, then the authority must determine whether the requester has the right to inspect or copy the record under the specific provisions of the law applicable to personally identifiable information, and grant or deny the request accordingly.

(If the requested record contains information on a record subject other than the requester or the person authorized by that individual, the provisions of sec. 19.356 on notice to a record subject, added by 2003 Wisconsin Act 47, apply. See the section below on "Personally Identifiable Information on Employees, Local Public Officers & Other Records Subjects.")

Correction of personally identifiable information. Sec. 19.365. An individual or person authorized by the individual may challenge the accuracy of personally identifiable information pertaining to the individual in records to which they have access by notifying the authority in writing of the challenge. The authority must then either correct the information or deny the challenge. If the challenge is denied, the authority must notify the challenger of the denial and allow the individual or person authorized by the individual to file a concise statement setting forth the challenge to the information with the disputed portion of the record. Only a state authority is required to give reasons for a denial of a challenge. The challenge provision does not apply to records transferred to an archival depository or when a specific state or federal law governs challenges to the accuracy of the record.

Personal information practices. Secs. 19.62-19.80. The 1991 legislation concerning personally identifiable information also created a subchapter of the statutes, in addition to the public records law provisions, on "personal information practices." An authority must develop rules of conduct for employees who collect, maintain, use, provide access to or archive personally identifiable information and must ensure that these persons know their duties relating to protecting personal privacy. Sec. 19.65.

This subchapter also has provisions concerning the accuracy of data collection and the sales of names or addresses. An authority that maintains personally identifiable information which may result in an adverse determination against an individual's rights, benefits or privileges must, to the greatest extent possible, collect the information directly from the individual, or verify the information, if obtained from another person. Sec. 19.67. Also, an authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. Sec. 19.71.

Personally Identifiable Information on Employees, Local Public Officers & Other Record Subjects (2003 Wisconsin Act 47)

Introduction. The release of records affecting the privacy or reputational interests of public employees has involved a good deal of legal uncertainty. Under Wisconsin supreme court decisions, custodians have been required to notify the subject when such records were requested and proposed to be released to give the record subject an opportunity to seek judicial review. *Woznicki v. Erickson,* 202 Wis. 2d 178 (1996); and *Milwaukee Teachers' Education Association v. Milwaukee Board of School Directors*, 227 Wis. 2d 779 (1999). However, as explained in the prefatory note to Act 47, these cases did not establish criteria for determining when privacy and reputational interests are affected or for giving notice to affected parties. Nor did these cases address the issue of whether the same analysis applies to records of private employees.

The legislature recently in Act 47 codified these cases in part, but under this act the rights apply only to a limited set of records. Act 47 applies to 4 categories of records relating to employees, local public officers and other records subjects:

1. Records of "record subjects" (i.e., persons who are the subject of personally identifiable information in public records) which, as a general rule, do not require notice prior to allowing access.

2. Records of employees and other record subjects that may be released under the balancing test only after providing the record subject with notice of impending release of the record and the right to judicial review prior to release of the records.

3. Records of local public officers that may be released under the balancing test only after providing notice to the record subject of the impending release of the record and the right to augment the record.

4. Records of employees and local public officers that are generally closed to access.

Act 47 also created a provision concerning the computation of time, because the notices deal with short time periods. Sec. 19.345. Under the public records provisions, when the time in which to do an act (e.g., provide a notice) is specified in days, Saturdays, Sundays and legal holidays are excluded from the computation.

General rule regarding notice & judicial review. Sec. 19.356(1). An authority is not required to notify a record subject prior to allowing access to a record containing information on the person, except as authorized in sec. 19.356 (see following) or as otherwise provided by statute. Nor is the record subject entitled to judicial review prior to release of the record. (Of course, a specific statute concerning access may apply and the authority may need to conduct the balancing test.) The statute goes on to provide when notice and an opportunity for judicial review are required prior to release of records.

When notice to employee/record subject required; opportunity for judicial review. Sec. 19.356(2). The authority must provide written notice to the record subject, as specified in the statute, prior to releasing any of the 3 following types of records containing personally identifiable information if the authority decides to allow access to the record. The authority in its notice must specify the requested records and inform the record subject of the opportunity for judicial review. The notice must be served on the record subject within 3 days of making the decision to allow access; service is accomplished by certified mail or by personal delivery. The records requiring notice prior to release are:

1. Disciplinary matters. A record containing information relating to an employee that is created or kept by the authority and is the result of an investigation into a disciplinary matter involving the employee or the possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.

2. Subpoenas; search warrants. A record obtained by the authority through a subpoena or search warrant. *Note* that this provision does not limit its applicability to employees; it applies in general to record subjects.

3. Records of other employers. A record prepared by an employer other than the authority if the record contains information relating to an employee of that employer, unless the employee authorizes the employer to provide access to the information.

The notice requirement prior to release of the above information (items 1-3) does not apply to release of the information to the employee or to the employee's representative under the statute relating to an employee's access to his or her own personnel records (sec. 103.13); nor does the notice requirement apply to release of the information to a collective bargaining representative.

Within 10 days of service of the notice of the intended release of the records, the record subject may start a court action to have the access to the records blocked. The statute provides a procedure for expedited judicial review of the authority's decision to release records and also provides that the records may not be released within 12 days of sending a notice or during judicial review periods.

When notice required to person holding local public office; opportunity for comments. Sec. 19.356(9). A different approach applies to the release of records with personally identifiable information pertaining to a person who holds a "local public office" (e.g., a governing body member, elected or appointed officer or department head) or a "state public office" (e.g., a municipal judge). Under this procedure, the authority must inform the record subject within 3 days of the decision to release the records to the requester. This notice is served on the officer by certified mail or personal delivery and must describe the records intended for release and the officer's right to augment the record. *Note* that the officer (unlike an employee under the previous heading) who is the record subject does not have the right of judicial review. Instead, the officer who is the record subject has the right to augment the record that will be released to the requester with his or her written comments and documentation. This augmentation of the record must be done within 5 days of receipt of the notice.

Employee/officer records generally closed to public access

1. Employee records closed to public access. Sec. 19.36(10). Act 47 generally prohibits an authority from releasing the records listed in a-d below. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. Nor does the prohibition on release apply to an employee or his or her representative accessing the employee's personnel records under sec. 103.13, or to a collective bargaining representative for bargaining purposes or pursuant to a collective bargaining agreement. The employee records which may not generally be open to public access are as follows:

a. Addresses; telephone number; social security number. Information concerning an employee's home address, home email address, home telephone number and social security number, unless the employee authorizes the authority to provide access to such information.

b. Current criminal investigations. Information relating to the current investigation of a possible criminal offense or possible misconduct connected with an employee's employment, prior to disposition of the investigation.

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

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

2. Local public officers' records closed to public access. Sec. 19.36(11). As with employees, certain records on individuals holding a local public office, as broadly defined, may not generally be released to the public. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. Nor does the prohibition on release apply to a local public officer who is an employee accessing his or her personnel records under sec. 103.13. The records on local public officers which may not generally be open to public access are as follows:

a. Addresses; telephone number; social security number. Information concerning the individual's home address, home email address, home telephone number and social security number, unless the individual authorizes the authority to provide access to such information.

b. Exceptions. This prohibition on release, however, does not apply to the release of the home address of an individual who holds an *elective* public office or who, as a condition of employment as a local public officer, is required to reside in a specific location. This exception allows the public to verify that its elected officials and other officers or high-level employees (who fill a position that fall under the definition of "local public office") subject to residency requirements actually live in the community or meet the applicable requirement.

3. Employee records under public works contracts. Sec. 19.36(12). Unless access is specifically authorized or required by a statute, an authority may not provide access to a record prepared or provided by an employer performing work on a project in which the employer must pay prevailing wages, if the record contains the name or other personally identifiable information relating to an employee of the employer,

unless the employee authorizes access. Sec. 19.36(12). However, as previously noted, information concerning an employee's work classification, hours of work, and wage and benefit payments received for work on the project may be released.

Enforcement & Penalties

The public records law provides for forfeitures and court orders to enforce the law. Sec. 19.37.

Court order to allow access. A person who has made a written request may bring an action for a writ of mandamus asking the court to order release of the withheld information. This procedure does not require following the notice-of-claim law applicable to many suits against the government. In contrast to the procedure under the open meetings law, a person seeking release of a public record does not have to initially refer the matter to the district attorney. However, the person may request the district attorney or the attorney general to seek mandamus. A committed or incarcerated person has no more than 90 days after denial of a record request to begin an action in court challenging the denial.

A requester who prevails in whole or substantial part may receive reasonable attorney fees, actual costs, and damages of at least $100. A committed or incarcerated person, however, is not entitled to the minimum $100 damages, although the court may award damages. The costs and fees must be paid by the authority or the governmental unit of which it is a part, and are not the personal liability of the custodian or any other public official. However, in a request for personally identifiable information under sec. 19.35(1)(am)(above), there is no minimum recovery of $100 in damages; instead, actual damages may be recovered if the court finds that the authority acted in a willful or intentional manner.

The law also provides for the award of punitive damages to the requester if the court finds that the authority or legal custodian arbitrarily and capriciously denied or delayed their response or charged excessive fees.

Forfeiture. The district attorney or the attorney general may seek a forfeiture against an authority or custodian who arbitrarily and capriciously denies or delays response to a records request or charges excessive fees. The statute provides for a forfeiture of not more than $1,000 along with the reasonable costs of prosecution.

Interpretations of the Law

Local officials who have questions on the public records law should contact their unit's legal counsel. Also, any person may contact the attorney general (the Wisconsin Department of Justice) to request advice on the public records law. Sec. 19.39. Contact information and a link to materials on the public records law may be found on the department's website: http://www.doj.state.wi.us/.

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