

## **FAQ: Open Records Requests**

*This FAQ deals with Wisconsin's public records law and responding to open records requests. A different FAQ deals with confidentiality of library records that identify library users and their use of library materials, resources, or other services.*

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### **What's the statutory reference?**

Sections 19.31 through 19.37 of Wisconsin Statutes

### **What does it mean?**

It is the state's official policy that citizens' knowledge of their government is vital and that, with a few exceptions, access to public records should be as complete as possible.

Section 19.31 of Wisconsin Statutes states: *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.*

### **What's a record?**

According to Section 19.32(2) of Wisconsin Statutes: *"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.*

Records typically found in a library include (not a complete list):

- Financial records (budgets, invoices)
- Correspondence, including email
- Board agendas, minutes, and other documents
- Policies and procedures
- Personnel records

Certain types of documents are not considered “records” under this statute:

- Drafts, notes, preliminary documents, and similar materials
- Published material available at the library (i.e.: books and other materials in the collection)
- Purely personal property with no relation to an employee’s job

### **How does someone ask for records?**

People can ask for records either orally or in writing. There are no “magic words” that need to be used; a request that reasonably describes the information or record requested is sufficient. The request does have to be reasonably specific as to subject and scope. The request can’t impose such a burden on the library that filling it would impede the normal functioning of the library.

### **How quickly do we have to respond to the request?**

Statute says the record should be produced “*as soon as practicable and without delay*” but doesn’t give a time limit. What constitutes a reasonable time for a response to any specific request depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and related considerations. The Wisconsin Department of Justice believes that 10 working days is a reasonable time to respond to a request for a reasonable number of records but understands that in some cases more time may be needed.

### **What exceptions are there?**

Some types of records are exempt from disclosure by state statutes:

- Records indicating the identity of any individual who borrows or uses the library's documents or other materials, resources, or services.
- Employees’ personal information, such as home address, phone number, social security number.
- Information related to a current investigation of a possible criminal offense or possible misconduct by an employee. Once the investigation has been completed these documents are no longer exempt from disclosure.
- Certain types of personnel records, such as performance evaluations, letters of reference, or other comments or ratings relating to employees.
- Computer programs (but the material input and the material produced as the product of a computer program is subject to the right of inspection and copying).

This is a partial list of the types of records that might be found in libraries. A more complete list is found in the Wisconsin Department of Justice’s [Public Records Compliance Guide](#).

### **What about making copies?**

Generally, anyone has a right to view or inspect a record and to make or request a copy of it. The person does not, however, have a right to make the copies themselves. You may decide whether to make copies for the requester or let the requester make them, and how the records will be copied.

The copy generally must be in the same format as the original record. For example, if you keep audio or video recordings of board meetings you would provide a copy of that recording. There is no requirement that you transcribe an audio recording.

If information is in an electronic format the requester has a right to a copy in electronic format, and a right to have the information printed out in a readable format. Requesters have the right to receive a written copy of any public record that is not in readily comprehensible form. A requester who prefers paper copies of electronic records may not be able to insist on them, however. If the requester does not have access to a machine that will translate the information into a comprehensible form, the agency can fulfill its duties under the public records law by providing the requester with access to such a machine.

### **Can we charge for providing records?**

Yes, but costs are limited to the “actual, necessary and direct” costs of filling the records request.

Among costs that can be charged are:

- Copy fees. It is the Department of Justice’s policy is that photocopy fees should be around \$.15 cents per page, and that anything in excess of \$.25 cents may be suspect.
- Costs of a computer run or any computer programming expenses required to respond to a request.
- Transcription fees
- Costs associated with locating records, if they total \$50.00 or more.
- Mailing and shipping fees

Additional fee regulations include:

- You may require prepayment of any fees if the total amount exceeds \$5.00 and may refuse to make copies until payment is received.
- You have discretion to provide requested records for free or at a reduced charge.
- You may recoup all of the actual costs in responding to a public records request but may not make a profit.

### **What if we’re asked to compile information?**

With limited exceptions, you are not required to create a new record by extracting information from an existing record and compiling the information in a new format.

### **What about employees’ email accounts?**

Generally, any emails sent to or from an email account provided by a public employer or used by the employee in the course of their duties are records subject to disclosure.

In July 2010 the Wisconsin Supreme Court ruled (*Schill v. Wisconsin Rapids Sch. Dist*) that personal emails sent to or from a public employee’s work account are not automatically public records subject to

the open records law. This agrees with court rulings in other states that purely personal e-mails sent to or from government accounts are not public records. The Wisconsin ruling did state, however, that private emails could be made public if they are used as evidence in a disciplinary hearing or to investigate misuse of government resources.

In June 2010 the U.S. Supreme Court held that a city did not violate an employee's constitutional privacy (Fourth Amendment) rights by searching his personal text messages that were sent and received on his city-issued pager. The Court concluded that because the city's search was "motivated by a legitimate work-related purpose, and because it was not excessive in scope, the search was reasonable" and lawful. However, it expressly declined to determine whether the employer had a reasonable expectation of privacy. (*City of Ontario v. Quon*)

### **What about minutes or other documents from closed sessions of the board?**

Wisconsin Statutes provide that meeting records—whether for an open or a closed session—must be open to public inspection. As long as the reasons for convening in closed session continue to exist you may be able to justify not disclosing any information that requires confidentiality, although if portions of the closed session information do not require confidentiality you must disclose that information if requested. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them.

### **What's the process if we feel a record should not be released?**

If you feel that a record cannot legally be released you should contact your municipal attorney for confirmation of the record's confidentiality and advice on the proper form for denying the request.

### **How long do we have to keep records?**

Most records must be kept at least seven years. Some may be disposed of sooner and others must be kept longer or even permanently.

Wisconsin requires that all public agencies have adopted a Records Retention Schedule, listing all records kept by the agency, when they are to be disposed of, and the manner of disposal. In 2006 a model records retention policy for libraries was approved by the State.

However, once a request has been received those records may not be destroyed until the request has been granted. If the request is denied you must retain the records until any appeal of the denial has been settled.

### **Is there anything else we should know?**

A requester must be provided facilities for inspection and copying of requested records comparable to those used by the authority's employees.

You may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

### **Where can I find more information?**

- Information for library trustees on public records from the Wisconsin Division for Libraries, Technology, & Community Learning: <http://dpi.wi.gov/pld/boards-directors/public-records/faq-public-records>
- FAQ on public records: [http://dpi.wi.gov/pld/boards-directors/administration/faq#Public\\_Records](http://dpi.wi.gov/pld/boards-directors/administration/faq#Public_Records)
- Public Records Compliance Guide from the Wisconsin Department of Justice: <https://www.doj.state.wi.us/sites/default/files/dls/2015-PRL-Guide.pdf>
- Legal FAQ on public records from the League of Wisconsin Municipalities: <http://lwm-info.org/1073/Public-Recordsm>
- The Library Board and the Public Records Law (Trustee Essential # 15): <http://dpi.wi.gov/sites/default/files/imce/pld/pdf/TE15.pdf>
- Library Records Retention Schedule Summary: <http://extranet.winnefox.org/sites/extranet.winnefox.org/files/legalresources/Library%20records%20retention%20summary.xls>

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