

Midwest Environmental  
**A D V O C A T E S**  
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**PUBLIC RECORDS LAW TOOL-KIT**

OPENING GOVERNMENT ONE REQUEST AT A TIME

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Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water.

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## **I. INTRODUCTION**

Public access to governmental records is a key component of an open government. Most of our contact with government decision-making comes in the form of governmental records. The public has a right and responsibility to monitor these decisions and hold government accountable.

Specifically, Wisconsin Statutes sections 19.31-19.39 (“The Public Records Law”) give the public a statutory right to view and/or copy public records, unless disclosure would be against the public interest. The Wisconsin Legislature drafted the public records statutes with a clear message in mind. They proclaimed that providing the public with information on the affairs of government is:

... 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.<sup>1</sup>

The Public Records Law serves as a basic tenet of our democratic system by providing an opportunity for public oversight of government. We hope you will exercise your right and help our democratic process by ensuring clean government and sound decision making.

## **II. PUBLIC RECORDS LAW**

The Public Records Law sets forth the public’s right to view and/or copy governmental records. In addition, it is important to consider exemptions to the Open Meetings Law, court decisions, and Attorney General Opinions and Correspondence. While our state government is only bound by the state Public Records Law, federal law, such as the Freedom of Information Act, shares the same policies and can factor into a balancing of interests.<sup>2</sup>

The following sections will provide information on the type of records that are available, the time line and procedure for receiving the records and the important role a public records request can have in shaping land-use decisions.

## **III. WHAT CAN I REQUEST?**

Unless it is within specific statutory exemptions or contrary to the public interest, a member of the public (“requester”) has the right to inspect or copy any “record” held by the government.

**A "record" includes:**

- 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;
- handwritten, typed or printed pages;
- maps or charts;
- photographs, films, recordings, tapes (including computer tapes); and
- computer printouts and optical disks.<sup>3</sup>

**A "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.<sup>4</sup>

Generally, “[c]ontent, not medium or format, determines whether document is a ‘record’ or not.”<sup>5</sup>

- **TIP:** The record must exist. While this may seem obvious, it can be a tricky line. Records custodians are not expected to create a record by compiling information from other records.<sup>6</sup> The requested information will often be given to you as it exists in the records archives, whether or not the applicable information is easily accessible within the document.
- **TIP:** Once a developer submits a proposal, plan or document to the City Council, Plan Commission or other government body, it is being “kept” by the city and is a public record.
- **TIP:** In addition to records created or kept directly by the government, any records that are created by contractors of the government - if under contract to do a government job - would fall into this category.<sup>7</sup> For example, if a contractor for the government conducts Wal-Mart® traffic studies or other reports or the studies are given to the government as part of a permit application, these become a public record.

#### **IV. WHAT RECORDS ARE CONSIDERED "PUBLIC"?**

A member of the public ("requester") has the right to inspect or copy most records created or held by an "authority," but what exactly is an "authority"?<sup>8</sup>

According to the Wisconsin Statutes, members of the public can access records from any government branch, agency or unit, including:

- A state or local office
- An elected official;
- An agency, board, commission, committee, council, department or public body corporate and politic created by constitutional, law, ordinance, rule or order;
- A governmental or quasi-governmental corporation;
- Any court of law;
- The assembly or senate;
- A nonprofit corporation that receives more than 50% of its funds from a county or municipality and which provides services related to public health or safety to the county or municipality; and
- A formally constituted subunit of any of the above.<sup>9</sup>

#### **V. CAN I COPY THE DOCUMENTS OR JUST VIEW THEM?**

Requesters can get copies or transcripts of any record.<sup>10</sup> If it is impractical to copy the record, the requester can inspect the records.<sup>11</sup> If inspection is the only option, the requester can ask to photograph the record.<sup>12</sup>

The requester has a right to a written copy of the original record, often called "source" material, even if the material is not currently in written document. For example, the Attorney General identifies a right to a copy of a computer tape, and a right to have the information on the tape printed out in a readable format.<sup>13</sup>

The requester does not, however, have a right to make his/her own requested copies. "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."<sup>14</sup>

## **VI. HOW DO I REQUEST THE DOCUMENTS?**

There is no magic form for public records requests. Requests can be oral or written.<sup>15</sup> Requests can be submitted by mail, in person or by another means that ensures its arrival. Requesters are not required to state the purpose of the request and, with a few exceptions, requesters are not required to identify themselves.<sup>16</sup> Finally, the request can be as broad or as specific as is required.

However, the goal of a request is to receive records as quickly, cheaply and easily as possible. Certain methods work better than others and, therefore, it is best to follow some guidelines.

### **A. Submit a Written Request**

Written requests are much better than oral requests. Written requests save confusion during the process and allow the requester to cite specific portions of the request if the response does not meet the original request. Written requests also require written responses, which are the key to reviewing the records custodian's thought process.<sup>17</sup> Perhaps most importantly, the request must be in writing "before an action to enforce the request is commenced."<sup>18</sup> In other words, if the authority violates the public records laws with respect to an oral request, the requester needs to resubmit a written request before he or she can pursue an enforcement action.

While a requester is not required to give a reason for his or her request, a custodian "almost inevitably must evaluate context to some degree" when reviewing the request.<sup>19</sup> A written request can provide some context to save time.

### **B. Make Sure That Your Request is Specific and Limited in Scope.**

The request must be reasonably specific as to subject matter and time frame involved.<sup>20</sup> State the type of records, the subject matter and the time frame, noting the statutory definitions of "records" and the specific statute sections that allow access to these records.

Again, no magic words are needed. However, you can use our Sample Public Records Request to draft your own letter. See [standard template](#).

## VII. HOW LONG SHOULD IT TAKE TO RESPOND?

A records custodian must respond to a public records request “as soon as practicable and without delay.”<sup>21</sup> While no specific time requirement is set, Department of Justice considers 10 days to be “reasonable.”<sup>22</sup> “Reasonable” time depends on the request and staff constraints as well.<sup>23</sup> If delay is arbitrary and capricious (essentially, no reasonable person would have caused such a delay), the records custodian may be fined up to \$1,000.<sup>24</sup>

If the request is fairly simple and copies are unnecessary, the request may be quicker. This is especially true for common documents that are on file in the office. Requesters have the right to inspect documents within 48 hours of request if the records are kept in that office, unless the office has designated at least 2 consecutive hours per week for inspection.<sup>25</sup>

## VIII. HOW MUCH SHOULD IT COST?

Requesters may be charged copy fees if they request copies of records. According to the Public Records Law, copy fees are limited to the “actual, necessary and direct cost” of location and reproduction unless a fee is otherwise specifically established or authorized to be established by law.<sup>26</sup>

- **TIP:** The Attorney General’s policy is that photocopy fees should be around 15 cents per page, and that anything in excess of 25 cents may be suspect.<sup>27</sup>

The Attorney General’s Compliance Guide specifically addresses potential fees, including:

- Photography and photographic reproduction fees may be charged if the authority provides a photograph of a record, the form of which does not permit copying, but are limited to the “actual, necessary and direct” costs.<sup>28</sup>
- Transcription fees may be charged, but are limited to the “actual, necessary and direct cost” of transcription unless a fee is otherwise specifically established or authorized to be established by law.<sup>29</sup>
- Location costs. Costs associated with locating records may not be charged unless they exceed \$50.00. Only actual, necessary and direct location costs are permitted.<sup>30</sup>
- Mailing and shipping fees may be charged, but are limited to the “actual, necessary and direct cost” of mailing or shipping.<sup>31</sup>

- Redaction costs. It is the Attorney General’s position that costs of separating, or “redacting,” the confidential parts of records from the public parts generally must be borne by the authority.<sup>32</sup> A recent Wisconsin Supreme Court case has been relied upon by some authorities as permission to charge these costs to the requester.<sup>33</sup>
- **TIP:** At times the government asks for prepayment of the costs to copy a record. This may violate the Public Records Law. As Wisconsin Statutes section 19.35(3)(f) states:

"An authority may require prepayment by a requester of any fees imposed ... if the total amount exceeds \$5.00."<sup>34</sup>

The authority may refuse to make copies until payment is received.<sup>35</sup> Except for prisoners, the statute does not authorize anyone to require prepayment based on the requester’s failure to pay fees for a prior request. When it is in the public interest to do so, an authority may choose to provide requested records for free or at a reduced charge.<sup>36</sup>

- **TIP:** Watch the wage and time spent by the clerk that is locating your files. The clerk’s wage and the time spent should be reasonably “necessary.” Poor record keeping does not justify locating costs.<sup>37</sup>

## IX. WHAT DOCUMENTS OR RECORDS ARE UNAVAILABLE?

Wisconsin legislative policy favors the broadest practical access to government. The presumption favoring disclosure is strong, but not absolute.<sup>38</sup> There are documents and records that are unavailable to the public. Some documents are unavailable because they are not considered “records,” (see [What is Not a Record](#)) while other “records” are unavailable because the harm to privacy and/or the public interest outweighs the benefit to the public.

This second category of potentially unavailable records requires the record custodian to apply a [balancing test](#) to “decide whether the strong presumption favoring disclosure is overcome by some even stronger presumption favoring limited access or nondisclosure.”<sup>39</sup>

There are more than 175 specific exemptions that are set forth by law.<sup>40</sup> Most notably for land-use, many plans and specifications of state-owned or state-leased buildings are exempt from public records request.<sup>41</sup>

- **TIP:** All exemptions must be set forth by law. The government cannot set blanket exemptions as a matter of policy.<sup>42</sup> When denying requests, the records custodian must cite the specific exemption, if it is the basis for the denial. [See Denying Requests](#). You can check the Wisconsin Statutes, under the subject area

of “Public Records” and also the specific subject of your records request, to access specific exemptions that pertain to your requests.<sup>43</sup>

## X. THE BALANCING TEST

Even if a record is considered a “public record” and is not subject to a specific exemption, the records custodian will still balance the public interests for and against disclosure before releasing a record.<sup>44</sup> The balancing test is done on a case-by-case basis.<sup>45</sup> In each case, “the custodian must balance the public interest in disclosure of the record against the public interest favoring nondisclosure.”<sup>46</sup> “[A]n ‘exceptional case’ exists when the facts are such that the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure, *notwithstanding the strong presumption favoring disclosure.*”<sup>47</sup>

- **TIP:** Make sure the custodian is balancing the “public interest” in non-disclosure, not the “private interest” of the subject of the records request. The private interest of a person mentioned or identified in the record is not a proper focus of the balancing test.

If there is a public interest in protecting an individual’s privacy or reputation interest as a general matter (for example, to ensure that people will be willing to take jobs as police, fire, or correctional officers), then there may be a public interest favoring the protection of the individual’s privacy interest.<sup>48</sup> Privacy should not be weighed based on the individual. Moreover, the identity of the requester and the purpose of the request are not part of the balancing test.<sup>49</sup>

If a government “cover-up” is alleged, the balance will likely shift towards disclosure.<sup>50</sup> The courts have suggested that citizens have a very strong public interest in being informed about public officials who have been derelict in their duties.<sup>51</sup> Therefore, the Attorney General clearly notes, “evidence of official cover-up is a potent reason for disclosing records.”<sup>52</sup>

Additionally, exemptions to the [Open Meetings Law](#) (Wis. Stat. § 19.85) and [Freedom of Information Act](#) (FOIA) (5 U.S.C. § 552) can be considered when balancing the public interest.<sup>53</sup> Specifically, the Open Meetings Law, which allows an authority to meet in closed session, “are indicative of public policy” and can be considered as balancing factors.<sup>54</sup>

If an Open Meetings Law exception is relied upon, the custodian must make “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.”<sup>55</sup> The fact that a meeting was closed does not necessarily mean that the records from that meeting are still restricted after the hearing is finished. Old records may have been originally created during a closed session, but the

reason for the closed session no longer exists. These records would now be subject to open record requests.

## **XI. PRIVACY**

While there are many exemptions that restrict access to public records, privacy is not one of them. In Wisconsin, the right to privacy<sup>56</sup> may block access to certain, truly private information. However, the privacy statute provides that, “[i]t is not an invasion of privacy to communicate any information available to the public as a matter of public record.”<sup>57</sup>

Additionally, the Attorney General notes that “prominent public officials must have a lower expectation of personal privacy than regular public employees, although greater scrutiny of public employees than their private sector counterparts comes with the territory of public employment.”<sup>58</sup>

## **XII. ELECTRONIC DOCUMENTS: KEY POINTS TO REMEMBER**

While electronically stored information is explicitly identified as a “record,” there are potential problems associated with the handling of these records. The following information will help a requester address the potential problems associated with their request for electronic records, before problems are identified by the records custodian.

### **A. You Must Compile Documents Yourself.**

Records custodians may view the gathering of electronic documents and printing of these documents as “compiling” a new document. As mentioned above, records custodians are not required to compile new documents. However, the act of taking an electronic copy of a document and printing it is NOT considered compiling a new, physical copy. While there are cases where requests can suggest a need to compile information into a new record, the Attorney General has set clear guidance on this issue:

When does retrieving electronically stored data become compiling information in a new format? Use a rule of reason. Consider how complicated it is to extract the data requested and whether the agency itself ever looks at the data in the format requested. . . . To what extent is such automatically generated data a “record” and must this data be retained by the agency custodian?<sup>59</sup>

### **B. You May Access Electronic Information That is Not Considered to Be a “Draft.”**

There may be difficulty accessing electronic files. First, agencies may delete e-files if the significant information has been transferred to written form.<sup>60</sup> There are specific rules for retention that should be read if this issue arises.<sup>61</sup> Second, if the electronic copies exist, then they are subject to the same restrictions as physical records. Specifically, e-mails have the same “personal property” and “draft” exceptions.<sup>62</sup> Given the personal nature of many e-mails, this is a likely defense against production. Also, some e-mails may be seen as “drafts” of future records and therefore exempt from public records laws. See [What Documents are Unavailable](#). A requester should remind the records custodian that personal information can be redacted and that records should not be denied just because part of the record is non-disclosable.<sup>63</sup> Unless the entire e-mail or electronic document is within an exception, the remaining portion must still be sent.

### **C. When Records are Not in a Readily Accessible Medium, You May Obtain Output Data Instead**

Access to information that is not readily accessible (perhaps because it is on a disk) must involve the same equipment that is available to employees.<sup>64</sup> In other words, if employees use a computer to access files, a requester should have access to a computer. However, using facilities can be tricky. Government bodies are not required to buy any equipment to ensure the same access as employees. They are also not required to provide access to operating programs for all electronic copies.<sup>65</sup> Moreover, requesters cannot request programs that are on file. Requesters are restricted to the output data from the programs.<sup>66</sup>

Printed copies of these records may be a good way to avoid this problem.

These pitfalls should not discourage requests for electronic information. E-mail communication, in particular, is often very revealing. E-mail discussions are more and more prevalent part of the governmental process and they are often a vital subsection of requested communications. Requesters should, however, note the above information as well as the time period that is selected when requesting these records.<sup>67</sup>

## **XIII. PROCEDURE FOR DENYING REQUESTS**

A records custodian’s denial of a public records request must meet specific requirements:

1. All denials of written requests must be in writing.<sup>68</sup>
2. Reasons for denial must be “specific and sufficient.”<sup>69</sup> If denial is due to an exemption, citing the statute provision would be “sufficient.” If denial is due to public policy reasons, a statement of the specific public policy reasons would be specific and sufficient.<sup>70</sup> The denial must show reasoning that would allow the public to assess/challenge the custodian’s judgment.<sup>71</sup>

- **TIP:** If no reasons are given in the denial, the court will order disclosure of the documents.<sup>72</sup>
  3. The reasons must be current.<sup>73</sup> In other words, if records are refused because of policy reasons that no longer apply, the records custodian must identify new and current reasons, or the custodian must release the record.
  4. The denial must inform the requester that the denial is subject to review in an action for mandamus under Wis. Stat. § 19.37(1), or by application to the District Attorney or Attorney General.<sup>74</sup>

Always remember that a decision to disclose a record is based on the records content, not its format.<sup>75</sup> Records custodians should not view the document as a whole, but rather the content as separate pieces of information. Therefore, the records custodian can not deny access to a record just because part is non-disclosable.<sup>76</sup> Moreover, “an authority is not relieved of the duty to redact non-disclosable portions just because the authority believes that redacting confidential information is burdensome.”<sup>77</sup>

#### **XIV. WHAT SHOULD I DO IF I SUSPECT A VIOLATION?**

If you suspect that a request has been unlawfully denied or your access delayed or unreasonably restricted, you may have legal recourse.

1. Contact Midwest Environmental Advocates or another law office and discuss a possible mandamus action asking a court to order release of the record.
2. Submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that an action for mandamus be brought asking the court to order release of the record to the requester.

For more information on writs of mandamus and possible enforcement actions, view the Attorney General’s Compliance Guide.

#### **XV. HOW DOES THIS HELP ME AFFECT LAND USE DECISIONS?**

Land-use decisions involve proposed plans, developer agreements, permit applications, letters, e-mails and more. Copies of these records are vital if you want to stay informed and involved in the decision-making process. Additionally, every time a member of the public requests copies of letters and e-mails sent between the members of a plan commission or city council and developers, the decision-making process becomes more transparent. Regardless of whether you are promoting or contesting a development project, let the governmental body know that you are watching. Access to key information and open discussion is the key to a fair and informed process.

Specifically, when Wal-Mart (or another big-box retailer) comes to town, there will be proposed plans, traffic impact studies, storm water studies and more. You owe it to your community to access these studies and plans, and review them for their potentially limited scope, unreasonable assumptions and skewed numbers. While an expert in these areas is extremely beneficial, it does not take an expert to raise questions. Often times it is the responses to those questions that reveals the real impacts involved in big-box and other sprawl projects.

Members of the public have the right to see communication between decision-makers and Wal-Mart, or other incoming projects. Don't accept private two-way dialogue between developers and city councils. Get informed and raise questions.

## **XVI. CONCLUSION**

Although it may not always seem so, local governments work for you. As a member of the public, you have the right to make sure they are doing the job you elected them to do. Responsible land use decisions rely on community members that take this right seriously and make the affairs of government truly accessible to the public. If all land use decisions are made after an open and honest debate with the public, our cities will likely remain places we call "home." If you hear about land use proposals that threaten this sense of community, start by contacting you city clerk and make sure your representatives are conducting a thorough, educated and open analysis. Before you accept your representative's view, make sure you know what is and is not being considered by these government bodies. Make sure their decisions are informed and objective. With the help of the Public Records Law, you can open the doors to responsible decisions and a sustainable community.

<sup>1</sup> WIS. STAT. § 19.31(2007).

<sup>2</sup> See *Linzmeier v. Forcey*, 254 Wis. 2d 306, 329, 646 N.W.2d 811 (2002); see also WIS. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., WISCONSIN PUBLIC RECORDS LAW WIS. STAT. §§ 19.31-19.39: COMPLIANCE OUTLINE 2 (Aug. 2005), available at <http://www.doj.state.wi.us/dls/docs/publicrecords805.pdf> (last visited July 10, 2007) (“[P]ublic policies expressed in FOIA exceptions may be relevant to application of the common law balancing test.”). It is important to note, however, that the United States Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, does not apply to states. *State ex rel. Hill v. Zimmerman*, 196 Wis. 2d 419, 428, 538 N.W.2d 608 (Ct. App. 1995).

<sup>3</sup> WIS. STAT. § 19.32 (2) (2007).

<sup>4</sup> § 19.32 (2).

<sup>5</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 2.

<sup>6</sup> See WIS. STAT. § 19.35(1)(L) (2007); see also *George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992); WIS. DEP'T OF JUSTICE, *supra* note 2, at 11.

<sup>7</sup> WIS. STAT. § 19.36(3) (2007).

<sup>8</sup> See WIS. STAT. § 19.32(1) (defining “authority” as it is used in WIS. STAT. §§ 19.33-19.39). Note that simply because a “private contractor maintains and has custody of the sought-after records does not mean it is an authority under [§ 19.32(1)].” *WIREdata, Inc. v. Village of Sussex*, 729 N.W.2d 757 (Wis. App. 2007).

<sup>9</sup> See WIS. DEP'T OF JUSTICE, *supra* note 2, at 4-5; WIS. STAT. § 19.32(1).

<sup>10</sup> WIS. STAT. § 19.35(1)(b) (2007); WIS. DEP'T OF JUSTICE, *supra* note 2, at 32.

<sup>11</sup> § 19.35(1)(b); WIS. DEP'T OF JUSTICE, *supra* note 2, at 32.

<sup>12</sup> § 19.35(1)(f).

<sup>13</sup> § 19.35(1)(e); WIS. DEP'T OF JUSTICE, *supra* note 2, at 32 (citing 75 Op. Att'y Gen. 133, 145 (1986)).

<sup>14</sup> § 19.35(1)(b); see *Grebner v. Schiebel*, 240 Wis. 2d 551, 553, 624 N.W.2d 892 (Ct. App. 2000).

<sup>15</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 8-9.

<sup>16</sup> WIS. STAT. § 19.35(1)(i),(h); but see § 19.35(1)(am) (pertaining to requests for documents containing personal information); WIS. DEP'T OF JUSTICE, *supra* note 2, at 8.

<sup>17</sup> See WIS. STAT. § 19.35(4)(b) (“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.”).

<sup>18</sup> § 19.35(1)(h).

<sup>19</sup> *Hempel v. City of Baraboo*, 284 Wis. 2d 162, 196, 699 N.W.2d 551 (2005); WIS. DEP'T OF JUSTICE, *supra* note 2, at 11.

<sup>20</sup> WIS. STAT. § 19.35(1)(h); see *Schopper v. Gehring*, 210 Wis. 2d 208, 212-13, 565 N.W.2d 187 (Ct. App. 1997) (request for tape and transcript of three hours of 911 calls on 60 channels is not reasonably specific); see also WIS. DEP'T OF JUSTICE, *supra* note 2, at 9.

<sup>21</sup> § 19.35(4)(a); see WIS. DEP'T OF JUSTICE, *supra* note 2, at 9.

<sup>22</sup> § 19.35(4)(a),(c); WIS. DEP'T OF JUSTICE, *supra* note 2, at 9.

<sup>23</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 9.

<sup>24</sup> WIS. STAT. § 19.37(4) (2007).

<sup>25</sup> § 19.34(2); WIS. DEP'T OF JUSTICE, *supra* note 2, at 8.

<sup>26</sup> WIS. STAT. § 19.35(3)(a).

<sup>27</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 32.

<sup>28</sup> WIS. STAT. § 19.35(3)(b).

<sup>29</sup> § 19.35(3)(a).

<sup>30</sup> § 19.35(3)(c).

<sup>31</sup> § 19.35(3)(d).

<sup>32</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 33 (citing 72 Op. Att'y Gen. 99 (1983)).

<sup>33</sup> See *Osborn v. Bd. of Regents of Univ. of Wis. System*, 254 Wis. 2d 266, 303-04, 647 N.W.2d 158 (2002) (The court did note, however, that the University is entitled to charge a fee for only the “actual, necessary and direct cost of complying” with plaintiff’s open records request.).

<sup>34</sup> § 19.35(3)(f).

<sup>35</sup> *State ex rel. Hill v. Zimmerman*, 196 Wis. 2d 419, 429-31 (Ct. App. 1995).

<sup>36</sup> WIS. STAT. § 19.35(3)(e); WIS. DEP'T OF JUSTICE, *supra* note 2, at 33.

<sup>37</sup> See WIS. DEP'T OF JUSTICE, *supra* note 2, at 32-33.

<sup>38</sup> *Hempel*, 284 Wis. 2d at 179-80; see WIS. DEP'T OF JUSTICE, *supra* note 2, at 1.

<sup>39</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 12, 17-25.

<sup>40</sup> Examples of such exemptions include information the disclosure of which likely would result in the disturbance of an archaeological site (WIS. STAT. § 44.02(23) (2007)); death tax returns and related documents (WIS. STAT. § 72.06 (2007)).

<sup>41</sup> WIS. STAT. § 16.851 (2007).

<sup>42</sup> *Hempel*, 284 Wis. 2d at 200-01.

<sup>43</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 15.

<sup>44</sup> *See Hempel*, 284 Wis. 2d at 169.

<sup>45</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 17.

<sup>46</sup> *Id.* at 17; *see also State ex rel. Journal Co. v. Co. Court for Racine Co.*, 43 Wis. 2d 279, 305, 168 N.W.2d 836 (Wis. 1969).

<sup>47</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 17; *see Hempel*, 284 Wis. 2d at 194-95.

<sup>48</sup> *See Linzmeyer v. Forcey*, 254 Wis. 2d 306, 327-28, 646 N.W.2d 811 (2002).

<sup>49</sup> *See Kraemer Bros., Inc. v. Dane Co.*, 229 Wis. 2d 86, 102, 599 N.W.2d 75 (Ct. App. 1999); WIS. DEP'T OF JUSTICE, *supra* note 2, at 17.

<sup>50</sup> *Hempel*, 284 Wis. 2d, at 196; *see also* WIS. DEP'T OF JUSTICE, *supra* note 2, at 21.

<sup>51</sup> *Hempel*, 284 Wis. 2d, at 196; *see also* WIS. DEP'T OF JUSTICE, *supra* note 2, at 21.

<sup>52</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 21.

<sup>53</sup> *See Linzmeyer v. Forcey*, 254 Wis. 2d 306, 328-29, 646 N.W.2d 811 (Wis. 2002) (discussing use of FOIA exemptions).

<sup>54</sup> WIS. STAT. § 19.35(1)(a); WIS. STAT. § 19.85(1) (2007) (Open Meetings Law).

<sup>55</sup> §§ 19.35(1)(a), 19.85(1).

<sup>56</sup> WIS. STAT. § 995.50 (2007).

<sup>57</sup> § 995.50(2)(c); WIS. DEP'T OF JUSTICE, *supra* note 2, at 19.

<sup>58</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 20 (citing *Hempel*, 283 Wis. 2d at 199).

<sup>59</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 27 (citing WIS. STAT. §§ 19.32(2) (defining “record” for purposes of public access) and § 16.61 (defining “record” for purposes of retention of state agency records) (2007); *see also* WIS. ADM. CODE DEP'T OF ADM. Ch. 12 (2002) (“Electronic Records Management—Standards and Requirements”); *cf. Public Citizen v. Carlin*, 184 F.3d 900 (D.C. Cir. 1999) (upholding Federal Archivist’s schedule for disposal of agencies’ word processing and e-mail files once those files were copied to a paper or electronic record-keeping system).

<sup>60</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 27.

<sup>61</sup> *See* WIS. STAT. §§ 16.61(state), 19.21(local) (2007). Specific provisions regarding optical disk and electronic storage of state and local government records are set forth in Wisconsin Statutes sections 16.611 and 16.612, giving the state Department of Administration rule-making authority to prescribe standards for storage. Wisconsin Administrative Code (Department of Administration) chapter 12 governs records stored exclusively in electronic format, but does not require an agency to maintain records in electronic format. The rule governs retention of both state and local records. The rule can be found at <http://www.legis.state.wi.us/rsb/code/adm/adm012.pdf> (last visited in May 2007). WIS. ADM. CODE [DEP'T OF ADM.] §.12.05 (2002). Background and explanatory materials concerning chapter 12 are found at <http://enterprise.state.wi.us/home/erecords/Default.htm> (last visited in May 2007). Storage rules are still being updated by the Wisconsin Department of Administration. *See* <http://enterprise.state.wi.us/home/email/default.htm> (last visited in May 2007).

<sup>62</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 28.

<sup>63</sup> *See* WIS. STAT. § 19.36(6) (2007); *Osborn*, 254 Wis. 2d at 302-03; *see id.* at 11.

<sup>64</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 28 (citing WIS. STAT. §§ 19.34(2), 19.35(2)).

<sup>65</sup> *Id.* at 28, 31.

<sup>66</sup> *Id.* at 28-29.

<sup>67</sup> *Id.* at 9, 28 (citing *Schopper v. Gehring*, 210 Wis. 2d 208, 213 565 N.W.2d 187 (Ct. App. 1997)); *see* WIS. STAT. § 19.35(1)(h).

<sup>68</sup> § 19.35(4)(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. [Denials of written requests must include] from the authority a written statement of the reasons for denying the request.”).

<sup>69</sup> WIS. DEP'T OF JUSTICE, *supra* note 2, at 10; *see Hempel*, 284 Wis. 2d at 178-79.

<sup>70</sup> *Chvala v. Bubolz*, 204 Wis. 2d 82, 89-91, 552 N.W.2d 892 (Ct. App. 1996).

<sup>71</sup> *See* WIS. DEP'T OF JUSTICE, *supra* note 2, at 10 (citing *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 824, 429 N.W.2d 772 (Ct. App. 1988)).

<sup>72</sup> *See Beckon v. Emery*, 36 Wis. 2d 510, 518-19, 153 Wis. 2d 501 (Wis. 1967) (court may order mandamus even if sound, but unstated, reasons exist or can be conceived of by the court); *cf. State ex rel. Blum v. Bd. of Educ., Sch. Dist. of Johnson*

*Creek*, 209 Wis. 2d 377, 388-91, 565 N.W.2d 140 (Ct. App. 1997) (An authority's failure to cite specific statutory exemption justifying nondisclosure does not preclude the court from considering statutory exemption.); *see* Wis. DEP'T OF JUSTICE, *supra* note 2, at 11.

<sup>73</sup> Wis. STAT. § 19.35(1)(a) (2007); *see* Wis. DEP'T OF JUSTICE, *supra* note 2, at 10.

<sup>74</sup> Wis. STAT. § 19.35(4)(b); *see* Wis. DEP'T OF JUSTICE, *supra* note 2, at 11.

<sup>75</sup> *See* Wis. DEP'T OF JUSTICE, *supra* note 2, at 2.

<sup>76</sup> *See id.* at 11.

<sup>77</sup> *Id.* (citing *Osborn*, 254 Wis. 2d at ¶ 46.).