Wisconsin Public Records Law 101

University Relations & Communications
External Relations
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Public Records Requests By Year @ UWM

- 2015: 300
- 2016: 400
- 2017: 500
- 2018: 600

The number of public records requests has been increasing from 2015 to 2018.
Wisconsin Public Records Law

- Wis. Stat. §§ 19.31 to 19.39
Why?

• Shed light on workings of government
• Encourage public to be an informed electorate
• Foundation of democratic society – providing opportunity for public oversight
Public Records Request Process

• Requests received
• Search for records
• Review responsive records
  – Is there a statutory or common law exemption from disclosure?
  – Apply balancing test
• Records released with letter explaining redactions and/or withheld records
Presumption

The public records law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business. The denial of public access generally is contrary to the public interest, and only in exceptional cases may access be denied.” — Wis. Stat. § 19.31
Public Record Roles

• Authority
• Legal Custodian
• Requester
Records
“Record”

“Any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.”

-- Wis. Stat. § 19.32(2)
Is it a Record?

- **NO:**
  - Drafts, notes, and preliminary documents
  - Published material available for sale or at library
  - Purely personal property
  - Material with limited access rights, such as copyrights or patents
Is it a Record?

• **YES**
  - Not created by the authority but in the authority’s possession
  - Personal email, texts, calls, and documents on an authority’s accounts
  - Business email, texts, calls, and documents on personal accounts
Is it a Record?

• YES
  – Data in a database
  – Social media
  – Contractors’ records
  – University surveillance camera video
  – Police body camera and dash camera video
Personal Email, Calls, and Documents on an Authority’s Account

• Email sent and received on @uwm.edu account is a record
• Includes purely personal email
• Disclosure generally not required
Government Business Emails, Calls, and Documents on Private Accounts

• May be “records”
• **Content** determines whether something is a “record”
• Personal materials on private accounts not subject to disclosure
Electronic Records

- Content not format
- Emails
- Database files
- PowerPoint presentations
- Audio and video
- Social media (Facebook, Twitter, etc.)
- Cell phones, including texts
Submitting a Request

• Sufficient request
  – Written or verbal
  – “Magic words” are not required
  – Reasonably specific as to time and subject matter
  – Custodian should not have to guess

• Large requests okay but cannot burden an authority that its normal functioning would be impaired
Processing a Request – Four Steps

1. Does a responsive record exist?
2. Is there an absolute right of access?
3. Is access absolutely denied?
4. Apply the balancing test
Step 1 – Does the Record Exist?

- Only records that exist at the time of the request must be produced

If asked for records, you are not required to create a record to respond to the request.

- Public records law does not require answering questions (unless existing record answers the question)
Step 2 – Absolute Right of Access

• Not many exist

• Examples
  – Books and papers “required to be kept” by sheriff, clerk of circuit court, and other specified county officials
  – Daily arrest logs or police “blotters” at police departments
Step 3 – Absolute Denial of Access

• Absolute Denial
  – Public Records Statutes
    • Information related to current investigation of possible employee criminal conduct or misconduct
    • Staff management planning
    • Employee home address, home email, home telephone number, and social security number
    • Financial identifying information
  – Other Statutes - FERPA
Step 4 – The Balancing Test

• Weigh the public interest in disclosure of the record against the public interest and public policies against disclosure
• Case-by-case analysis and fact intensive
• Blanket rules disfavored
Redaction

- If part of a record is disclosable, that part must be disclosed
- Non-disclosed portions must be redacted
- Redactions are considered a denial of access and subject to review
Special Issues

• Electronic Databases
  – Direct access to databases not required
  – Requester, within reason, may request a data run to obtain requested information

• Metadata
  – No controlling Wisconsin precedent
    • Circuit court held metadata not a record because it includes drafts, notes, preliminary computations
    • Other jurisdictions held metadata is subject to disclosure
Responding to Request

• Must provide written response to written request

• Must inform requester that denial is subject to review in enforcement action for mandamus, or by application to district attorney or attorney general

• Reasons for denial must be specific and sufficient
Timing of Response

- Response is required “as soon as practicable and without delay”
- No specific time limits, depends on circumstances
- DOJ: considers 10 days reasonable for simple requests
Notice Before Release

• Required by statute
• Records resulting from closed investigation into disciplinary matter or employment-related violation of policy, rule, or statute.
• Records obtained by subpoena or search warrant
• “Record subject” can try to stop disclosure in court
Costs

• Actual, necessary, and direct costs only
• Copying (paper)
• Location, if costs are $50.00 or more
• Mailing/shipping to requester
• May not charge for redaction
Enforcement

• Wis. Stat. § 19.37

• Mandamus action to challenge:
  – Withholding a record or part of a record
  – Delay in granting access to a record or part of record
Record Retention – Public Records Law

• After receiving public records request:
  – No destruction until request granted or until at least 60 days after request is denied
  – 90 days if requester is committed or incarcerated
  – No destruction during enforcement action
Record Retention @ UWM

• All university employees are responsible for management and retention of their records according to approved schedules

• See General Record Schedules here:
  – https://uwm.edu/libraries/archives/uwm-records-management/general-record-schedules/

• Questions should be directed to University Archives at askarch@uwm.edu
Questions?

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