



## A Quick and Simple Review of Wisconsin Open Records Law

*To allow the citizens the greatest possible information regarding the affairs of government and the officials that represent them.*

1. The presumption in courts of law is to favor disclosure but it is not absolute.
2. Definition of a record
  - a) Any material which is written, drawn, printed, spoken, visual, or electromagnetic. This includes handwritten, typed or printed documents. Maps and charts. Pictures, films and tape recordings. Computer tapes and printouts, CD's and other electronic records and communications.
  - b) Records also include contractor records
  - c) A government authority cannot evade its public records responsibility by subcontracting its records responsibilities.
3. What is not a record
  - a) Drafts, notes and preliminary documents.
  - b) Published material available for sale at a library
  - c) Personal property
  - d) Copyrighted or trade secret material.
4. Requester
  - a) Basically any person who requests copies or wishes to inspect a record is considered to be a requester
  - b) A requester has a greater right to obtain personal identifiable information about the requester.
5. Authority
  - a) Any state or local office
  - b) An elected official
  - c) Boards, agencies or commissions
  - d) A government or quasi-government corporation.
  - e) Any court of law
  - f) State Assembly or State Senate
  - g) Non-profit corporations that get more than 50% of their funding from a government agency and provides services to public health or safety

## 6. Custodian of Records

- a) A person or persons who have the authority to render decisions and carry out the statutory responsibilities
- b) An elected official is the custodian of their own records
- c) The chairperson of a committee
- d) A dept. head may be designated as the custodian of records.

## 7. The Request

- a) The request does not have to be in writing but it is highly recommended.
- b) You do not have to give them your name but you do need to have contact information so they can tell you when the request is ready for pick-up.
- c) You **do not** have to give them a reason why you want the records.
- d) The request must be reasonably specific about subject matter and the length of time involved.
- e) There are **no “Magic Words” required.**

## 8. The Response to the Request.

- a) A response is mandatory, while it is not required to be in writing, you can request a written response.
- b) The Attorney General has opined that 10 working days is generally a reasonable period of time to respond to a request.
- c) The law says that requests for public records should be given a high priority.
- d) Arbitrary or capricious delays or denials without sufficient cause or reasons can cost the custodian punitive damages of up to \$1,000 dollars.
- e) If your request is in writing, then it is incumbent upon the custodian to provide a denial or partial denial in writing.
- f) A custodian must provide specific reasons for the denial.
- g) The purpose of the written denial is to restrain custodians from simply denying access to records. It also gives the requester notice of reasons for denial and allows the requester to re-draft another request or prepare a legal challenge.

## 9. Redaction

- a) If a portion of the record is allowed to be disclosed, it must be disclosed.
- b) If there needs to be any redactions done, this cost shall be borne by the custodian.

## 10. Right of Access

- a) There are 3 categories dealing with right of access
- b) Absolute right of access
- c) Absolute denial of access
- d) Right of access determined by the balancing test. This is done on a case by case basis.

## 11. Absolute denial of Access (you may not request these)

- a) Government employees home address
- b) Home phone number
- c) Home e-mail address

- d) Social Security number or other personally identifiable information.
- e) Ongoing criminal investigations
- f) Information relating to a government employee's employment examination or evaluation.
- g) Computer programs
- h) Trade Secrets.
- i) Law enforcement informants
- j) Student records
- k) Patient health records
- l) D.A. prosecution files
- m) Executive privilege
- n) Attorney-client privilege

## 12. The balancing test

- a) The custodian has a duty to balance the interests of public disclosure versus the interests of non-disclosure or to put it another way, the circumstances of non-disclosure must override the strong presumption of openness.
- b) Elected officials and other public officials have a lower expectation of privacy than regular public employees.
- c) Citizens have a strong public interest in being informed about public officials who have been derelict in their duties.

## 13. Fee's for Copying

- a) Fees for copying should be around 15 to 25 cents per page.
- b) Fees are limited to the "actual, necessary and direct cost"
- c) The custodian may charge a fee for location of the records but the first \$50.00 dollars of location costs are free to the requester.