

THE OPEN GOVERNMENT PROTECTION ACT

HOW TO FIX WISCONSIN'S PUBLIC RECORDS LAWS TO ENSURE TRANSPARENCY AND ACCOUNTABILITY


HOW THE LAWS ARE SUPPOSED TO WORK

When an individual requests records, and a government entity wrongfully refuses to turn them over, the individual may file a lawsuit to obtain the records. Historically, once that suit was filed, the requester could recover the attorney's fees they incurred from bringing the suit, even if the government agency promptly backed down and turned the records over before the judge ruled on the case. This served as an important check in favor of transparency and accountability.

THE PROBLEM: FRAME PARK VS WAUKESHA

*However, a recent Supreme Court decision in the case of Friends of Frame Park v. Waukesha, made clear that the statutory language **might not allow fee recovery** in those types of public record lawsuits—as a result, bad actors now have a reason not to turn records over promptly and to instead **create delays and added expense for those who seek public records.***

THE SOLUTION



The Open Government Protection Act is a simple fix which will ensure that the public records law can continue to be used by everyday citizens to obtain public documents and to hold governments accountable. This legislation essentially mirrors federal law, by amending the current statutes as follows:

SECTION 1. 19.37 (2) (a) of the statutes is renumbered 19.37 (2) (a) 1.

SECTION 2. 19.37 (2) (a) 2. of the statutes is created to read:

19.37 (2) (a) 2. A requester has prevailed in whole or in substantial part under this paragraph if the requester has obtained relief through any of the following means:

- a. A judicial order or an enforceable written agreement or consent decree
- b. The authority's voluntary and unilateral release of a record if the court determines that the filing of the action under sub. (1) was a substantial factor contributing to that voluntary and unilateral release.

These simple but effective reforms will ensure that local governments continue to have the same incentive they had previously – to respond as soon as practicable and without delay to all requests for public records. This directly fixes the Frame Park issue and in effect restores the law to the way it was thought to be prior to that decision.