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SHINING A LIGHT

Enhancing Transparency and Accountability in Wisconsin's Public Records Process

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“A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives.” - President James Madison

Introduction

Sunshine Week (March 16-22) is an annual celebration of government transparency and the public’s right to know how their government operates. Coinciding with President James Madison’s birthday, a staunch advocate for open government, this week serves as an opportunity for organizations like the Wisconsin Institute for Law & Liberty (WILL) to highlight the importance of transparency and public records as important tools for holding government accountable.

Wisconsin has a longstanding commitment to open and transparent government. While the current version of the Wisconsin Public Records Law was enacted in 1981 and has been updated over the years, the state's tradition of government transparency dates back to 1849.[1] Current state law provides that individuals “are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”[2] The law provides a “presumption of complete public access” to documents and “only in an exceptional case may access be denied.”

WILL has long advocated for a transparent and open government through both its litigation and policy efforts. For citizens looking to use Wisconsin’s public records law to hold their government accountable, WILL also released "The Citizen’s Guide to Open Government."[3] This resource offers an overview of the state’s transparency and open meetings laws and includes templates for public records requests to help individuals navigate the process.

This policy brief presents actionable reforms for policy makers to adopt that would improve government transparency efforts in Wisconsin.

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[1] Weber, Peter, and Melissa Schmidt. *Wisconsin’s Earliest Public Records Laws*, Wisconsin Legislative Council, Aug. 2023, docs.legis.wisconsin.gov/misc/lc/issue_briefs/2023/legislature/ib_wisconsin_s_earliest_public_records_laws_ms_2023_08_04.

[2] Wis. Stat. 19.31

[3] Spitz, Katherine, and Lucas Vebber. *The Citizen’s Guide to Open Government*, Wisconsin Institute for Law & Liberty, Aug. 2023, will-law.org/will-unveils-open-records-guide-to-promote-transparent-government/.

Set Clear Response Times

Under current law, government entities, including state and local governments, are required to respond to record requests "as soon as practicable and without delay."[4] As a general matter, the Attorney General's office has long advised that "generally, 10 working days is a reasonable time for an authority to respond to a simple request for a limited number of easily identifiable records . . ."[5] But as a practical matter, most (if not virtually all) requests take longer for a response, often significantly so.

Neither state law nor court cases provide clear guidance as to how the "as soon as practicable and without delay" requirement is to be interpreted, leaving it instead to a fact-specific inquiry. The result is a lot of uncertainty amongst both record requesters and record custodians about what the law actually requires, and how soon a response must be provided.

To fix this, and provided much needed certainty, the legislature should adopt a law which defines "as soon as practicable and without delay" to require that each record custodian must respond to every record request within 14 days, and either: (1) deny the request; (2) provide the records requested; or (3) provide a date certain by which the records will be provided, except that in no circumstances can this date certain be longer than 60 days after the date the request was made.

Such a reform should also include enforcement provisions allowing record requesters to go to Court and seek relief if they do not receive a response within 14 days or the records in the timeframe promised.

To ensure that records are promptly turned over, the legislature should further provide that records custodians may only charge location costs if they provide records (in full) within 14 days of the initial request being submitted, if the location cost fee is kept at all. More on that in the next section.

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[4] Wis. Stat. 19.35(4)(a)

[5] *Wisconsin Public Records Law Compliance Guide, Pg 15*, Wisconsin Department of Justice, May 2024. https://www.wisdoj.gov/Open%20Government/PRL_guide.pdf.

Eliminate or Raise Location Fee Thresholds

Under current Wisconsin law, records custodians may charge requesters a fee for the "actual, necessary and direct" cost of locating records, but only if the total exceeds $50.[6] This minimum threshold has not been increased to keep up with inflation and has been abused by government entities. This fee applies only to the time spent searching for and locating records – not time spent reviewing or redacting them. The current practice is a bit of a black box. State law requires that the lowest paid employee capable of performing the task must handle the search and compilation of records[7], but requesters often have no idea if the estimates that custodians are providing them with are accurate or fair.

Many governmental entities abuse the process and quote exorbitant amounts to intentionally discourage people from following through with requests. Governments are not forced to charge for locating requests, and in fact some governments waive this expense as a best practice to promote transparency. However, this is not always the case.

In fact, in a 2021 report entitled, "Opening the Schoolhouse Door", WILL requested curricular records from the state's nine largest school districts and the difference in charges between districts were staggering.[8] For example, Racine Unified School District charged WILL nothing for the requested records, while the Madison Metropolitan School District quoted WILL $5,250 for the same request.

The current threshold of $50 was adopted in 1981 and hasn't been updated to keep pace with inflation. This artificially low threshold creates a financial barrier that intentionally discourages citizens from requesting records. The location fee should be eliminated for a number of reasons.

First, the current system incentivizes poor record keeping, allowing governments to charge for records that should have been readily accessible to begin with. Second, this system effectively requires requestors to pay twice for the same work – once through their tax dollars, which fund a government's recording keeping responsibilities, and again through the charging of the minimum location fee.

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[6] Wis. Stat. 19.35 (3)(c)
[7] Wis. Stat. 19.35 (2)(h)(b)
[8] Flanders, Will, and Jessica Holmberg. *Opening the Schoolhouse Door: Promoting Curriculum Transparency*, Wisconsin Institute for Law & Liberty, May 2021, will-law.org/public-school-curriculum-transparency-legislation-key-to-battling-politics-in-the-classroom/.

If eliminating the threshold is a bridge too far, then, at the very least, the threshold should be increased to reflect inflationary impacts and include an annual automatic adjustment that keeps pace with rising costs. Raising the threshold to keep up with inflation would increase the amount to approximately $171 today. This is an issue that should garner bi-partisan support. Governor Evers proposed increasing the location fee threshold to $100 in his 2021 proposed budget.

Restoring Attorney Fee Recovery for Public Records Lawsuits

When an individual requests records and a government entity wrongfully refuses to turn them over, the requester may file a lawsuit to obtain the records. Historically, once a lawsuit is filed, the requester can recover attorney fees incurred in bringing the suit—even if the government agency backed down and turned over the records before the judge issued a ruling. This has historically served as an important check in favor of transparency and accountability.

However, a recent Wisconsin Supreme Court decision, *Friends of Frame Park, U.A. v. City of Waukesha*,[9] has made it more difficult for a records requester to recover attorney fees. The court interpreted state law to mean that a party can only "prevail" (and recover fees) when a court makes "a final decision on the merits" and "grants a judgment for one party over the other."

In practice, this means government entities can refuse to release records until a citizen has undergone the time and expense of filing a lawsuit, then release those records before a court ruling—potentially avoiding the obligation to pay attorney fees. This creates a chilling effect on transparency efforts, as it makes it prohibitively expensive for Wisconsinites to enforce their right to public records. Fewer attorneys will be willing to take on these cases, undermining the very accountability that Wisconsin's open records laws are meant to

[9] Friends of Frame Park, U.A. v. City of Waukesha, 2022 WI 57, 403 Wis. 2d 1, 976 N.W.2d 263.

secure. WILL highlighted this issue in a 2022 policy report entitled "Broken Records: A Call for Legislative Reform in Wisconsin Public Records Law."[10]

In response to the Frame Park decision, Rep. Todd Novak and Sen. Duey Stroebel introduced the Open Government Protection Act (2023 SB 117) in March 2023.[11] The bill, recently reintroduced by Rep. Todd Novak and Sen. Van Wanggaard[12], received unanimous bipartisan support in the State Senate but failed to receive a vote in the State Assembly. It would restore the pre-Frame Park standard by amending the statutory definition of "prevail" to allow courts to award attorney fees when the voluntary release of records is substantially related to the requester's decision to file a lawsuit. This approach aligns with the standard under the federal Freedom of Information Act (FOIA) and ensures that government actors cannot strategically avoid responsibility by delaying records production until after a lawsuit is filed.

Under the bill, when a government authority voluntarily or unilaterally releases a record, a judge may award attorney fees if the court determines that the lawsuit was a substantial factor in compelling the release. This reform is essential to ensuring that government entities comply with the state's requirement to produce records "as soon as practicable, without delay."

Transparency of Public Records Requests

Individuals requesting records often have no clear sense of how long their request will take to fulfill. Public entities typical response is that requests will be processed in the order they are received, but without any visibility into the queue, requestors are left in the dark.

The legislature should pass a law that requires every executive branch agency and local government entity to maintain a public facing database of pending records requests. The spreadsheet should list the following:

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[10] Vebber, Lucas, and Samantha Dorning. *Broken Records: A Call for Legislative Reform in Wisconsin Public Records Law*, Wisconsin Institute for Law & Liberty, July 2022, will-law.org/legislature-should-protect-wisconsins-public-records-law/.

[11] Senate Bill 117, 2023-2024 (2023) https://docs.legis.wisconsin.gov/2023/proposals/sb117

[12] 2025 LRB-2241/1

- Requestor's Name
- Description of the Requested Records
- Date of Request
- Date Acknowledged
- Date Fulfilled

Many state agencies already maintain an internal log of public records requests. This proposal would simply require government entities to make these logs publicly accessible and update them at least once per week. The Wisconsin Department of Justice (DOJ) already publishes a log similar to what is envisioned above. Table 1 gives an example of a proposed records log.

Table 1. Sample Records Log

Requestor	Request	Date Received	Date Acknowledged	Date Fulfilled
John Doe	Emails pertaining to policy x	3/1/2025	3/3/2025	3/10/20255
Jane Doe	Budget documents for 2024	3/5/2025	3/6/2025	3/14/2025
Bill Smith	October Meeting Minutes	3/6/2025	3/8/2025	3/14/2025

In addition to a log of pending records requests, public entities should also produce a monthly report of public record request response times. This should show when a request was opened and closed, with the number of calendar days it took to fulfill the request. The report should also include the mean and median number of days it took to fulfill requests that month. This is also a practice that the Wisconsin DOJ has adopted.[13]

Public Records Custodian Transparency

Each public records authority should be required to designate a dedicated public records officer and prominently display their contact information on the entity's website. Too often, government entities will have a form that requestors are required to fill out but fail to

[13] *Response Times to Public Records Requests*, Wisconsin Department of Justice, www.wisdoj.gov/Pages/AboutUs/records-response-times.aspx.

identify a point of contact for follow-up. This often leaves requesters unsure of whom to contact for a status update or follow-up questions.

In addition, the Wisconsin Department of Justice should maintain a statewide directory of public records custodians and their email address for all public entities, including state agencies, local governments, school districts, law enforcement agencies, and other public authorities to ensure requesters can easily identify and contact the appropriate records custodian.

Conclusion

Transparency is the cornerstone of a well-functioning democracy, as it promotes an informed citizenry that can use information to hold their elected officials accountable. The reforms outlined in this report are designed to remove barriers and make public records more accessible to your average citizen. More importantly these reforms should help to curb abuses by bad actors and reduce delays in obtaining records. By establishing clear response times, removing financial barriers to records, restoring attorney fee recovery and improving the tracking of public records, Wisconsin can reaffirm its commitment to government accountability. Lawmakers should act and implement these much-needed reforms.