

Frequently Asked Questions About Libraries and Wisconsin's Public Records Law

(The answers to these questions are informal interpretations of Wisconsin's public records law—libraries may wish to seek an attorney's opinion when applying the law to particular circumstances.)

Wisconsin's public records law provides that almost all records of state and local government (which includes public libraries) are available to the public. The policy of Wisconsin's public records law is summarized by the following statutory declaration of policy:

"In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be 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, § 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."
(Wis. § 19.31)

Must we respond to all public records requests? And, how quickly do we have to respond?

You must respond to all requests to view or copy public records made by any person (except most requests from individuals who are committed or incarcerated). The requester need not be a resident of the state and generally cannot be required to give their name or the purpose of the request. Acceptable identification may be required only when necessary for security reasons or when required by federal law or regulation.

Public records requests must be responded to "as soon as practicable and without delay". Any denial of a written request for records must include a written statement of the reasons for denying the request, and must inform the requester that the determination is subject to review by mandamus (a

writ from a court ordering performance of an act) or upon application to the attorney general or district attorney.

What records must be made available for viewing or copying?

Except as otherwise provided by law, any requester has the right to inspect or receive a copy of any public record. This applies to records in any format.

An important exception to the public records law for libraries is the statutory prohibition on release of records that identify an individual who uses a publicly funded library (Wis. Stats. § 43.30).

Therefore, any record produced in response to a public records request must be edited to remove any information which could identify an individual as a library patron, such as a patron's name or address. This information can only be released with the consent of the individual, by court order, to custodial parents or guardians of children under the age of 16 (library records relating to that child's use of the library's documents, materials, resources, or services), or (under certain circumstances) to other libraries for interlibrary loan purposes.

Common law (judge-made law) allows the denial of certain requests for access to public records if the balance of interests favors non-disclosure. Some of the cases in which the courts have upheld non-disclosure involve certain personnel records of public employees; however, the Wisconsin Supreme Court has also held that personnel records are not automatically excluded from disclosure. A 1999 Wisconsin Supreme Court decision held that a public employee whose personal interests are implicated in the potential release of records must be given the opportunity for judicial review before the records are released.

Who determines which records are subject to disclosure under the public records law?

Every organization subject to the public records law must designate in writing one or more legal custodians to respond to public records requests. In the absence of such a designation, the authority's highest ranking officer and the chief administrative officer (most likely the board president and the director, in the case of a public library). The mayor, village president or town chair of your community has the option of appointing the legal custodian for library records. The custodian(s) shall also designate one or more deputies to act in his or her absence. If you have

concerns about the release of certain records, it may be advisable to consult with the municipal attorney.

Every organization subject to the public records law must also adopt and prominently display a notice identifying the legal custodian and establishing the time, place and method for requesting records, and indicating any copying costs. Generally, records must be available for inspection during all regular office hours.

Can we charge for copying and other costs?

You may charge a fee not to exceed "the actual, necessary and direct cost" of reproduction and mailing. A locating fee may be charged only if the "the actual, necessary and direct cost" of locating the records exceeds \$50.

How long do we need to retain public records?

Municipal and county governing bodies can adopt ordinances that provide for the destruction of obsolete public records. However, the period of time for retention provided by these ordinances may not be less than 7 years for most records. Library system official records need to be retained at least 10 years, as required by the Wisconsin Administrative Code.

Can we be penalized if we violate the public records law?

Yes! An organization or legal custodian that improperly denies or delays a request may be ordered to pay the requester's attorney fees, damages of not less than \$100, and other actual costs. In addition, an organization or legal custodian that arbitrarily and capriciously denies or delays response to a request, or charges excessive fees may be required to forfeit not more than \$1000 in punitive damages.