



A Crash Course in Open Records:

Obtaining Hidden Information from
State and Local Government in Wisconsin

by

Aletheia



The open records request (ORR) is one of the most powerful tools available to any citizen activist or journalist. Knowing how to write and submit an open records request gives you a powerful way to gain insight into what government is doing.

What Is an Open Records Request?

Most people have heard of the Freedom of Information Act, legislation that ensures American citizens can request and obtain public records from the federal government. Wisconsin has a body of law, collectively referred to as “Open Records Law,” that allows citizens of this state to make similar requests of any state or local public entity. You can send such requests to an elected office, a state or local agency, or almost any unelected board or committee created to serve the public at any level of government, including public educational entities (e.g., schools, school boards and districts, technical colleges, UW campuses, etc).

Why Is an Open Records Request Valuable?

Government websites frequently house lots of publicly accessible information. Always check to see if what you need is obtainable online before writing an open records request.

However, many things are not accessible online and thus remain essentially hidden to the citizen unless they are sought via other means. In fact, nearly any level of government will generate so much data and documentation that we can never hope to see everything that it does through its various arms.

There’s good news, though: In Wisconsin, most information that government generates, receives, or holds is available for public scrutiny. The citizen simply has to discern where to look and then write a request that will return the desired information. By wisely structuring open records requests and capturing important data, the citizen can not only gather valuable intelligence but also inform others, and pursue appropriate action.

What Is Actually Attainable via Open Records?

In short...A LOT!

Wisconsin has strong open records laws that make all public offices, agencies, committees, and boards—whether state or local—subject to open records requests. Public schools, school boards, and state universities, colleges, and technical schools are likewise subject to open records law. On occasion, if privacy laws need to be respected, some kinds of information may be returned to you with redaction. But the citizen can be refused very little.

Records can take the form of postal correspondence, emails, texts (yes, government business done on digital devices are subject to open records, including personal devices), visitor logs, phone logs, audio and video recordings, reports, spreadsheets, unpublished website data, and just about any other kind of documentation you can imagine.

Wisconsin open records law can be found in Chapter 19 of the Wisconsin State Statutes, where the State Legislature also saw fit to explain its purpose and intent:

19.31 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, ss. 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.

The Wisconsin State Statutes are [searchable online](#). Complete [individual chapters](#) may also be downloaded in PDF format for convenience. It's worth it to read all relevant sections of Chapter 19, so that you have the best possible familiarity with what open records law says. Knowing the law empowers us as activists.

Note: On occasion, offices or agencies will attempt to refuse requests. There are legal remedies for such refusals. The first step is a written notification to the State Attorney General's office or your local district attorney (DA). Email will not suffice. An actual letter must be sent, stating the opposition you've encountered. If the Attorney General or your local DA refuses to assist or you already know they won't, the next step is to write and send an affidavit to the person whose sworn oath of office covers the person who has refused to comply. In some cases the person refusing to comply will have taken such an oath. In some cases this the non-compliant party will be a public employee who works under the chain of command of an oath-holder.

Affidavits will be covered in a future Dane Undivided publication. For now, just know that sending an affidavit transmits a signal to an oath-holder that a lawsuit is the next step if they do not comply.

In Wisconsin, courts tend to come down on the side of citizens and journalists where open records law is concerned. So, do not despair if you're having difficulty obtaining your records. Just create a clear paper trail of your efforts to obtain the records you seek. If you persevere, you will almost certainly prevail in the end. It just may take a bit longer than you might have hoped.

Do Open Records Cost Anything?

As a general rule, no—provided you're asking for something that is easy to find and return to you. However, it is true that no government office or agency is compelled to create new documentation without charging you a fee for time. So, best practice is to ask for things that already exist in some form, then perform any additional work to understand or interpret that data yourself.

A public office is also empowered to charge you for printing costs. However, most open records requests can be fulfilled digitally, via email or PDF files. *Always* aim for electronic delivery.

If you structure your requests wisely, most of the time they will be fulfilled professionally and without incident. However, you will occasionally run into government officials or agencies who don't want to render up the information you seek. Such an individual or office might, for instance, insist that they cannot provide the information without investing many staff hours to do so and present you with a high estimate for fulfillment that is designed to discourage you and make you go away. They may even fulfill your request, only to present you with an exorbitant bill and tell you that the records will be released to you only when you pay up. In essence, they hold your records hostage for a ransom. In such cases, citizens have sometimes been presented with invoices for hundreds or even thousands of dollars.

While there's no guarantee of avoiding these sorts of tactics, there are definitely ways to minimize the likelihood that you will experience them. One of the best ways to protect yourself and avoid surprises is to



include in your request a sentence or two along these lines:

The documents I'm requesting should already be easily accessible, and I'd prefer a digital form of delivery. For these reasons, I do not expect that there will be any charges made to me. However, if the information I'm requesting would, for any reason, incur a fee, please notify me at this address before fulfilling the request.

In this manner, you create proof that you asked to be contacted in the event of charges. In the event that fees are assessed, you also provide yourself a means of determining if you may need to rephrase/restructure your open records request to avoid costs.

If you discover in the process that your request is too broad or complex, consider breaking it up into several ORRs. In order to avoid costly fees, you can either submit these smaller ORRs yourself, one or two at a time over a longer period of time; or you might enlist the help of some friends to help you submit the various smaller requests.

Some things may incur cost, regardless of your best efforts. For instance, if something has been archived, it may involve a good deal more time to locate it. Officials and agencies generally have the discretion to waive fees for records that are in the public interest. You can always leverage this knowledge and ask an office or agency to do so. As a rule, we advise including language along these lines in any ORR you send:

The information being requested is in the public interest, and it will not be used commercially. For that reason, I would request that a waiver of fees.

Despite your best efforts to avoid fees, sometimes you will incur them. Consider the value of the information you've requested. Some things may, in fact, be well worth purchasing. While some records may seem expensive up front, those records may enable you to prove or achieve something far more valuable in the long run.

Pro Tip: If you don't want to pay a fee, or if a record cannot be provided to you any other way, the Wisconsin State Statutes also give you the right of onsite inspection. In other words, you can make an appointment, go right to where a record is kept, inspect it for yourself, take notes, photograph it, etc.

What If I Don't Know Where to Look for the Records I Need?

If you don't know who would have local records you seek, contact the appropriate city or county clerk, a city council member, a county board member. Clerks, in particular, tend to know a lot about who has what. If it's state-level documents you're after, try reaching out to the office of a state assemblyperson or senator. Office staffers at the State Capitol also usually know either where to look or can make solid suggestions about who else to ask.

You don't have to tell anyone why you want the information. In fact, unless you already know and trust the person you're asking, it's often wise not to tell an office or agency much about who you are or what you plan to do with the information you are pursuing. Just be friendly, say that you're doing some research, and ask for their kind assistance in figuring out how best to obtain what you seek.

If you can't get answers, which is rare, you may need to make some best guesses and experiment a bit by simply submitting an open records where you think you might have some luck. Trial and error isn't always bad. It can teach you a lot. Moreover, it may enable you to build connections with people in offices that could prove helpful to you later.



How Do I Write an Open Records Request?

STEP 1: Determine what kind of information would be helpful to you.

Think of open records like pieces of a jigsaw puzzle that you need to put together. Start by jotting down questions you want or need to answer: who, what, when, where, why, how. Once you have a list of questions in front of you, it will become a lot easier to start brainstorming the kinds of documentation you need to complete the picture. Is it emails or texts between two or more persons? Do you also need phone logs or personal calendars? How about invoices, purchase orders, contracts, scopes of work documents...? Reports?

STEP 2: Discern which government institutions, offices, or agencies possess the right information.

Make any inquiries needed, so that you're prepared to send your ORR to the right person or place. Many government offices will even have an email address listed on their website to which open records requests may be sent. If you don't see one, either call the office for more information or send the ORR to the general address. Someone will direct it on from there, if necessary.

STEP 3: Use boilerplate language as a guide in order to properly structure your request.

The following template works well as a base for an ORR submission. You can certainly personalize the greeting and add your own friendly touches. Make sure to fill in the correct information, as appropriate:

To Whom It May Concern:

Under Chapter 19 of the Wisconsin State Statutes, I am writing to request the following records:

1. [requested data]
2. [requested data]
3. [requested data]

These records involve simple searches and are in the public interest. In addition, I prefer to receive fulfillment of the above-mentioned records in PDF/digital format. For these reasons, I do not expect that there will be any charge for fulfillment of this request. However, if a fee will be charged, please notify me in advance of fulfillment as to reasons and costs, so that I can best determine how to proceed.

Thank you in advance for your kindness in reading and fulfilling this request.

Most sincerely,

[Your Name]

STEP 4: Send your request.

Typically, you will receive an acknowledgement of your request and even an estimate of when you may expect fulfillment. However, some offices do not provide the courtesy of an acknowledgement. If you don't receive an acknowledgment within 48 hours, it's advisable to call and verify that your request has indeed been received.

Again, your request will usually be fulfilled in two to four weeks or less—sometimes even the same day. If you do *not* receive your records in a timely manner, start with a polite inquiry. Some-



times an office is simply overwhelmed and struggling to keep up. After the 30 day mark, if a polite nudge or two does not do the trick, you probably need to submit an affidavit to the appropriate person. Watch for a guide on affidavits in the near future, or reach out to Dane Undivided for guidance.

Do I Have to Identify Myself When I Submit an Open Records Request?

No! State Statute 19:35(1)(i) makes it absolutely clear that the requestor does not have to identify him- or herself. This provision can prove handy for all kinds of reasons.

If you fear retribution or have some other valid reason to guard your identity, simply set up an email that does not include any personally identifying information in the address you choose. Send any sensitive ORRs from that account.

Do be aware that many offices/agencies will be uncomfortable with anonymous requests. They don't have to be comfortable with your anonymity to give you the information you've requested. If you wish to remain anonymous, and an office or agency presses you to reveal your identity, politely remind them that Wisconsin State Statutes do not require you to reveal anything about yourself. Sometimes the efforts to get you to reveal your identity may be subtle—for example, asking you to call to discuss the request. There are usually ways around such ploys. If it's actually necessary to make phone contact, a digital calling service that protects your identity or a burner phone may be employed.

If the office/agency wrongly pressures you, or says it cannot hand over information without knowing your name and address, a second reminder of the law will generally get you what you need. If a second reminder doesn't work, a threat to take legal action might.

Never start out with threats though. Always be pleasant at the start. Rattling sabers should only be leveraged as a last resort. Honey will almost always get you further than vinegar.

Realize that if you do have to take legal action, it will likely become far more difficult or impossible to continue to protect your identity. This reality is an obvious drawback with anonymous requests. Anonymity can't always be sustained. That said, most requests will be fulfilled without incident, even when you submit them anonymously.

While you have the ability to remain anonymous in sending ORRs, it's preferable, wherever possible, to have your name on a request. It's good for government officials and agencies to know that actual, identifiable constituents are watching. In fact, such knowledge can apply significant pressure and even disincentivize corruption. Be as courageous as possible. Get others to stand with you, if needed.

How Do I Know if I'm Getting All of the Information I've Requested?

At times, you won't know. But a few valuable tips and tricks will get you as close to certainty as possible.

First, think of open records as pieces of a jigsaw puzzle. The more documentation you request, the clearer it will become what pieces you still need...and which pieces may have been withheld. Be creative in figuring out the various types of records that will reveal or confirm parts of the truth. Have fun brainstorming!

Second, particularly when requesting email or texts, the same open records request can be submitted to multiple parties in order better to ensure that all information has been returned. For example, if you want



all email correspondence (both in and out) between your county board chair and your director of public health for the period from Sept 1 to Sept 21, 2021, containing the phrase “mask mandate,” submit an identical open records request to both parties. You should be able to match up all the emails received by one party to emails sent by the other...and vice versa. If you can't, someone has withheld something.

Another great technique, if you're requesting emails or texts, is to have a friend send a message to the account you plan to query. The email your friend sends should match the parameters you intend to leverage. If your friend's email is not included in the fulfilled request, again, you know withholding is probably occurring.

What if I Suspect That the Records I Want Have Already Been Deleted or Destroyed?

While Chapter 19 of the Wisconsin State Statutes does contain prescriptions/guidelines for the destruction of archived or outdated records no longer deemed useful, most of what you'll want to request will not fall into this category. Technically, public agencies and most elected officials are not permitted to destroy any records that have not been approved for destruction through proper, legal procedure. If you're asking for record from the recent past—say, within the last several years—it likely remains accessible, even if it's been archived and costs a bit to retrieve it.

However, state legislators are unfortunately not bound to maintain records in the same manner. Surprise! When they created open records law, state legislators ensured a loophole for themselves. We know from inside sources that some legislative staffers actually delete entire email inboxes and outboxes at the end of each week. Irresponsible? Yes. Illegal, no—unfortunately not.

But fear not! Even the “delete” button is not the end of all hope when it comes to legislative offices.

It is our understanding that a trap catches and holds deleted legislative emails for 30 days. Such deleted emails will no longer appear to exist in a legislator's inbox, but they should still be on a mail server somewhere. When requesting email records from a legislative office, always ask that deleted emails be part of the search.

And there's even better news!

Even if more than 30-days have passed, many deleted records may still be obtainable. Most state-level information remains available for seven years. However, to find and access deleted documents, you'll need to request what is termed a deep search. This process is a bit more involved and may cost you something; but people have leveraged it successfully to get at records that a public office probably hoped were gone forever.

Any Helpful Tips for Structuring an ORR?

Many of the open records requests you submit will involve a search for information that you're not sure is there, but that you have reason to suspect exists. That means you'll need to think about not only where best to direct your request but how to compose it in order to maximize your chances of capturing the right data. Sometimes your request will need to remain quite general in order to capture as many records as possible; sometimes you'll want to keep your request very specific to limit the number of records returned to you.

A little experimenting will teach you a lot. If the first request you send doesn't yield the kind of information you want, remember that it's a learning opportunity. Restructure your request with different dates or key-



words and try again. Try asking for a different type of document. Or submit a similar request to a different office or agency. Keep trying until you either find what you're looking for or become convinced it doesn't exist.

A couple of valuable rules of thumb when requesting email/postal correspondence or texts:

1. Bookend your request with relevant dates (e.g., all emails sent between 6/1/2020 and 6/3/2020).
2. Use specific keywords, phrases, and names in order to target your ORR appropriately.

Conclusion

Open records request generally take just a few moments to compose and mere seconds to send. The return on this small investment can be extremely high. The problem is, most people don't even know they have the opportunity to submit such requests. Knowing how to write and submit ORRs will vastly expand your power and reach as both a citizen and as a grassroots activist. Never be afraid to leverage your right to access the hidden wealth of public information that is beyond the public eye.