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An Introduction to: Wisconsin's Open Meetings & Public Records Laws

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Presentation Goals

- Develop basic familiarity with the Open Meetings Law
- Develop basic familiarity with the Public Records Law
- Discuss a few traps for the unwary
- Identify key resources for further information

Very helpful DOJ Resources

November 2015

Wisconsin Open Meetings Law Compliance Guide



Wisconsin Department of Justice
Attorney General Brad D. Schimel

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Wisconsin Public Records Law Compliance Guide



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Acknowledgment / Attribution

- This presentation draws from very helpful Wisconsin Department of Justice resources – available online from the DOJ's Office of Open Government.



Open Meetings Law



Open Meetings Law (Sections 19.81 to 19.98, Wis. Stats.)

- Requires that meetings of governmental bodies...
- be preceded by public notice... and
- be held in a place that is open and reasonably accessible.

- Except in limited situations in which a closed session is specifically authorized.



"Governmental Bodies"

- "Governmental body" means:

a State or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order...



"Governmental Bodies"

Consider and discuss:

- Advisory bodies
- Administrative staff
- Subunits of governmental bodies
- Quasi-governmental bodies

"Governmental Bodies"

- "Meeting" means:

convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.

- the *Showers* test:

a meeting occurs whenever members convene for the purpose of conducting governmental business and the number of members present is sufficient to determine the body's course of action.



"Meeting"

Consider and discuss:

- Preliminary decisions and information gathering
- Conference calls and video conferences
- Social networks
- Circulation of written correspondence
- Social gatherings
- Chance gatherings
- Negative quorum
- Walking quorum

"Public Notice"

- Every meeting of a governmental body shall be preceded by public notice
- Notice must be communicated to the public by posting in three public places (or in one public place and electronically on the body's website, but even in this case three places is recommended) –or– publication in a medium likely to give notice in the area
- Notice must also be provided to the official newspaper for the community in question (or a news medium likely to give notice), and any news media that have filed a written request for notice

"Public Notice"

Content requirement:

- Time
- Date
- Place
- Subject matter

The content of the notice must be reasonable under all of the relevant circumstances. *State ex. rel. Buswell*



"Public Notice"

Timing

- At least 24 hours before the meeting
- Or, for "good cause" no less than 2 hours, if longer notice is impossible or impracticable



"Open and Reasonably Accessible"

- Physical location
- Room size
- Physical accessibility



Closed Sessions

Process

- All meetings must start in open session and require a vote to go into closed session

Circumstances (see Guide for discussion)

- Examples:
- Dismissal, demotion, discipline & other employment matters
- Competitive or bargaining reasons
- Conferring with legal counsel about litigation



Enforcement

Remedies

- Civil fines
- Voiding actions taken



Public Records Law



Public Records Law (Sections 19.31 to 19.39, Wis. Stats.)

Presumption

- The Public Records Law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business..."



Applicable Roles

- "Authority" – i.e. ., a governmental body
- "Legal Custodian" – carries out responsibilities
- "Requester" – need not identify themselves or state the purpose of the request



"Record"

- "Any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority."



"Record"

Discuss:

- Drafts
- Material with limited rights (copyrights, patents)
- Material not created by the authority but in its possession
- Personal emails and texts, etc., on authority's account
- Business emails and texts, etc., on a personal account
- Powerpoint presentations
- Social media posts
- Contractors' records created in the course of contract



Sufficient Request

- Requests do not need to be in writing
- No particular form and no "magic words" are required
- Must reasonably describe the records
- Must be reasonably specific as to subject matter
- "Overly broad" means ambiguous (not that there are too many records)
- Requests for email records often use search terms



Responding to a Request

- Does a responsive record exist? (No need to *create* one.)
- Is there an absolute right of access?
- Is access absolutely denied?
- Otherwise, apply the "balancing test"
- Redact produced records as necessary
- Timing of response (generally 10 business days)
- Denials require a written response



Special Considerations

Discuss:

- Format of records produced
- Redaction
- Driver's Privacy Protection Act
- Electronic Databases
- Metadata
- Costs (actual, direct and necessary)



Enforcement

Remedies

- Civil fines
- Voiding actions taken



Headlines

- Policy body camera footage
- Whether the Wisconsin Employment Relations Commission must disclose the names of those voting in a municipal employees' union recertification election while the election is ongoing or can withhold those names until after the election.

Questions and Discussion

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