

Public Records Request Training

ACLU

Description of Public Records Requests

Description of Public Records Requests

- The Freedom of Information Act governs release of public records from federal government agencies.
- States have their own open records laws for the release of information from state government agencies.
- Emails, memos, data files, complaint records, incident reports, and more records are generally available.

Public Records Requests Resources

- Various organizations have resources for activists seeking public records:
 - [Wisconsin Freedom of Information Council](#)
 - [The Center for Constitutional Rights](#)
 - [American Oversight](#)
 - [Stanford Computational Policy Lab](#)

Wisconsin Open Records Act

Wisconsin Open Records Act

- Wisconsin Open Records Act authorizes requesters to inspect or obtain records maintained by government authorities.
- Records must be created or kept in connection with an official purpose of the agency.
 - Not everything a public official or employee creates is a public record.
- More information on the Wisconsin Open Records Act can be accessed [here](#).

Records

Includes

- Handwritten, typed, or printed documents
- Maps and charts
- Photographs, films and tape recordings
- Tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved
- Electronic records & communications
- Contractors' records
- Public records requests and responses

Excludes

- Drafts
- Notes
- Preliminary documents
- Materials prepared for personal use
- Personal property of the custodian
- Published material available for sale
- Materials with access limited due to copyright, patent, etc.

Requests

- The request must reasonably specify the subject matter and estimate the length of time necessary to respond to a request.
- The WI Department of Justice stated that 10 days is generally time for responding to a limited number of easily identifiable records.
- A reasonable time might be longer for records that require location, review, or redaction of many documents.

Requests

- The law presumes information may be released.
- The custodian may:
 - Grant access to records;
 - Deny access to records; or
 - Apply a balancing test to determine right of access: public interest in disclosure of the record against the public interest favoring nondisclosure.

Exemptions

Exemptions include, but aren't limited to:

- Information maintained, prepared, or provided by an employer concerning the home address, home email address, home telephone number, or social security number of the employee or an individual who holds a local or state public office;
- Information related to a current investigation of possible criminal conduct or misconduct connected to employment; or
- Investigative information obtained for law enforcement purposes.

Law Enforcement Records

- Police reports of closed investigations
 - Policy interests favor disclosure but balancing is done on a case-by-case basis.
- Police reports of ongoing investigation
 - Policy interests against disclosure will likely outweigh interests in favor of release.

Open Records Fees

- A requester may be charged for the following:
 - Copy and transcription fees;
 - Photography and photographic reproduction fees;
 - Location fees; and
 - Mailing and shipping fees.
- A requester may not be charged for the costs of deleting or redacting responsive records.
- Prepayment of fees may be required.

Open Records Enforcement

- A requester may challenge withheld records or delayed access to records by:
 - Bringing an action for mandamus asking a court to order release of the record; or
 - Submitting a written request to the district attorney of the county where the record is located or to the attorney general requesting an action for mandamus.
- Attorneys' fees and other costs may be awarded if the requester prevails in the mandamus action.
- You can request a waiver or reduction of charges if your request is in the public interest.

**Lessons Learned
from the Kenosha
Investigation**

When Making Requests

- Be as specific as possible. Include:
 - Case, citation, or incident number, if known;
 - Dates, locations, and officer names or ranks, if known; and
 - Name of the document where the information could likely be found.
We have included sample forms that might be helpful.
- Submit multiple rounds of requests if necessary. You may have to request a list of the officers present, then list the names of all officers above a certain rank specifically in your request.

Public Information Officers

- Arrange a time to meet with the public information officer (PIO) to discuss what types of records are collected and when they are created.
 - Explain that you want to reduce the administrative burden by narrowing the scope of responsive documents.
 - Discuss the circumstances under which officers create records.
 - Ask what type of searches can be run.
 - The department may say it cannot run keyword searches in police records.
 - Send an email or letter summarizing what was discussed with the PIO, including any information that does not exist.

Process/Timeline

- Email searches are most likely to incur costs.
- Follow up! Follow up! Follow up!
 - The WI Department of Justice said most responses should be sent in 10 days but it can take many months to finalize public records requests.
 - You may need to meet with PIOs multiple times to discuss the scope of your requests and send letters regarding the outstanding requests.
 - You may need to submit a writ of mandamus asking the court to order unresponsive police departments to respond to your public records request.

Process

- This process may feel like searching for a needle in a haystack.



Sample Requests

- Documents, notes, memoranda, questionnaires, or summaries of interviews or surveillance created or conducted by [law enforcement agency] on [date] regarding [topic].
- Documents, reports, summaries, screenshots, narrative descriptions, and downloaded or preserved information or videos in your possession from social media accounts or livestreams monitored by [law enforcement agency] on [date] regarding [topic].

Sample Requests

- Video footage and photographs in the possession, custody, or control of [law enforcement agencies] depicting [topics] in any of the following locations from [time and date] to [time and date] in [location].
- Disciplinary records reflecting action taken against [officer] for misconduct related to [topics and/or date-], including but not limited to, records related to reprimands, command discipline, penalty days, dismissal suspension, suspension (with or without pay), circumscription of responsibilities (i.e. desk duty) or termination due to [action].

Sample Requests

- 911 call logs, recordings, and transcripts that occurred between [time on date] and [time on date].
- Radio runs and (if in existence) transcripts of radio runs from [time on date] to [time on date].
- Emails, SMS and similar messages (including but not limited to iMessage, WhatsApp, Signal, and other messaging apps), chats, and other electronically-stored messages sent or received between [law enforcement agency] officers and/or squad cars between [date] and [date] regarding [topic].

Sample Terminology

- As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to audio recordings, correspondence, documents, data, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, text messages, and video recordings.

Sample Terminology

- These records relate to an incident for which broad public disclosure is in the public interest—[describe incident]. My intention is to use these records to ultimately to share these records with the public at large; such public disclosure and analysis is in the public interest. Therefore, pursuant to Wis. Stats. § 19.35(3)(e), I request that you waive or reduce charges for production of these records. If you decline to waive such fees and the request will cost more than [price limit], please advise me before proceeding.

ACLU

WE THE PEOPLE