



OPEN MEETINGS LAW TRAINING

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Open Meetings Law Overview

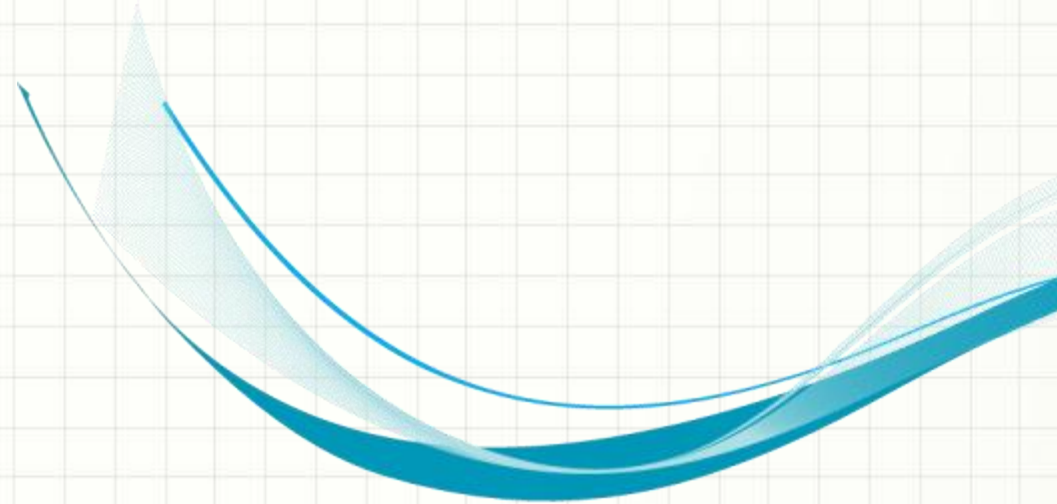
Public Policy

Applicability

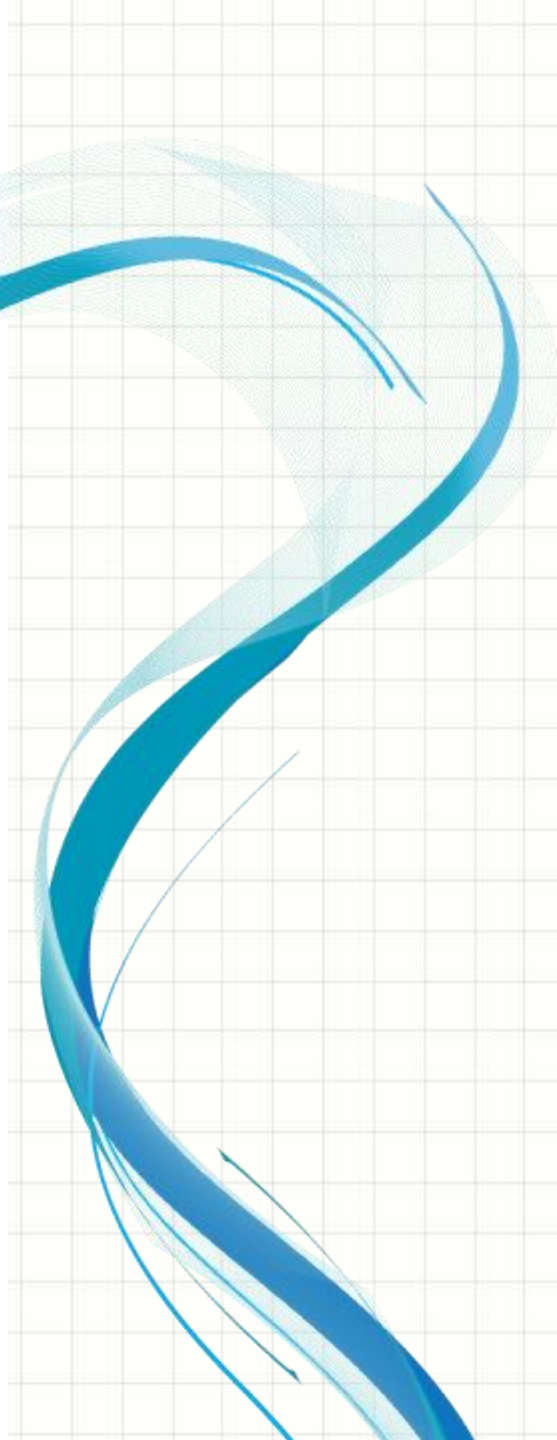
Meeting Requirements

Open Session v. Closed Session

Penalties

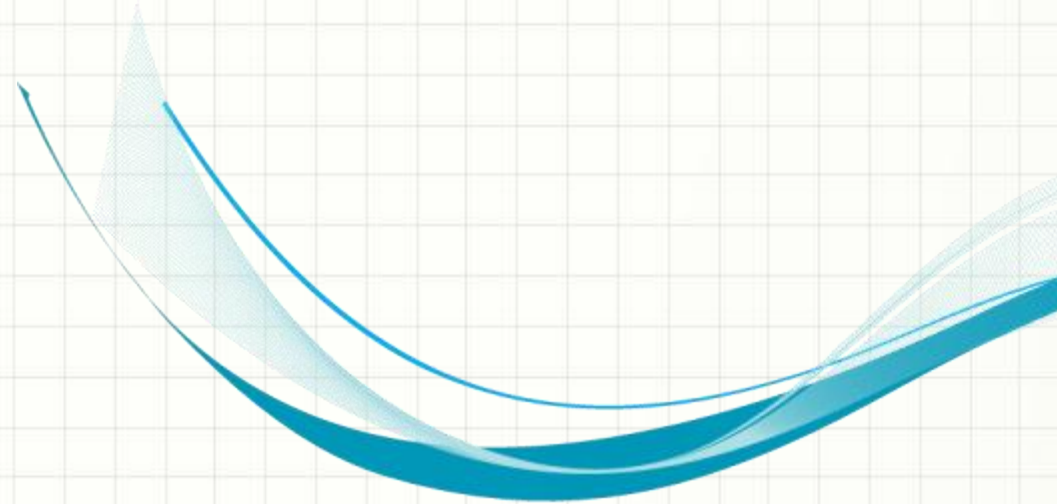


Public Policy

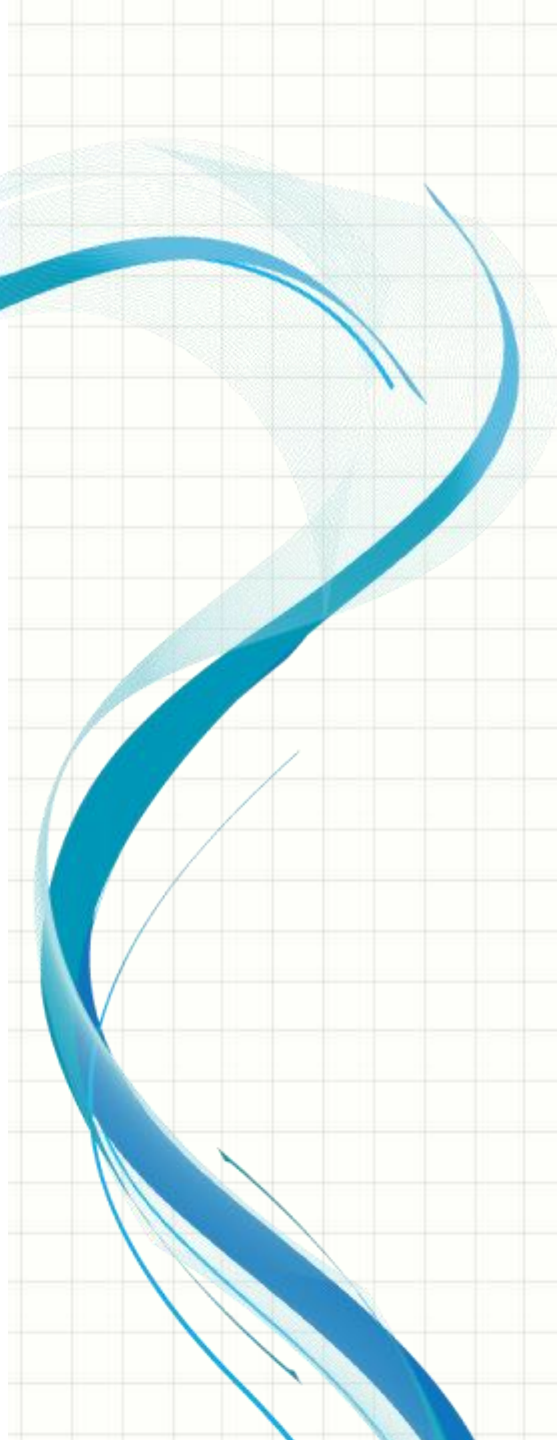


“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.”

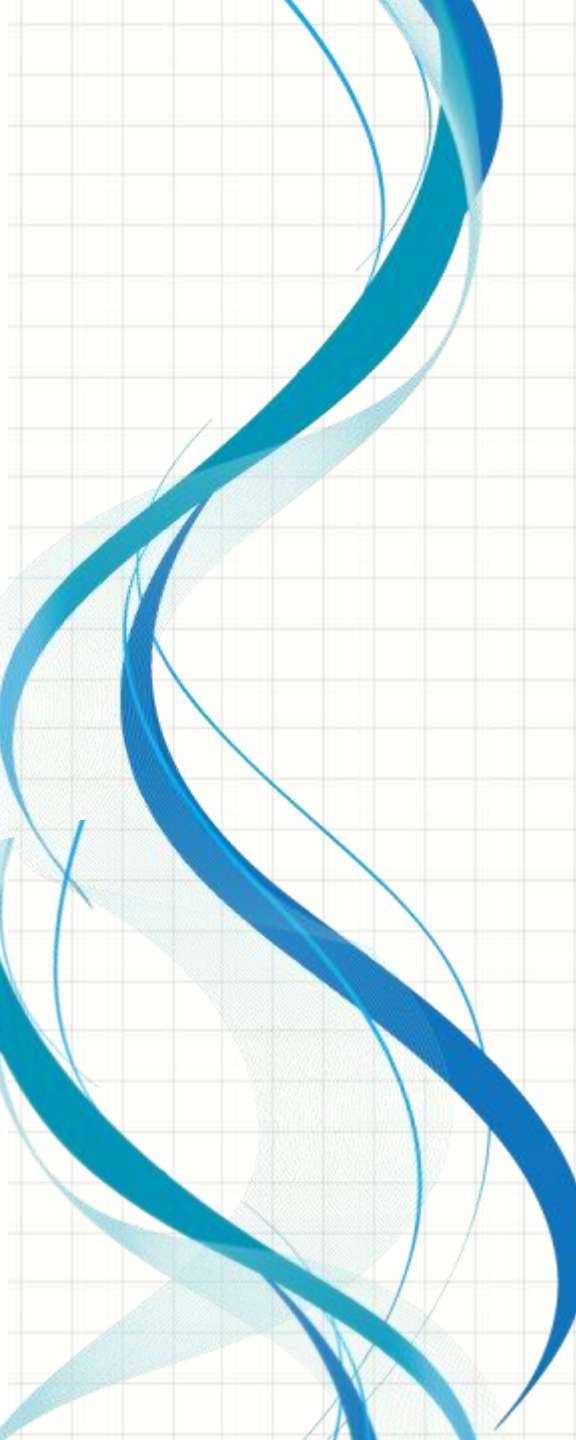
-Wis. Stat. § 19.81(1)



Applicability




The Open Meetings
Law applies to
MEETINGS of
**GOVERNMENTAL
BODIES.**



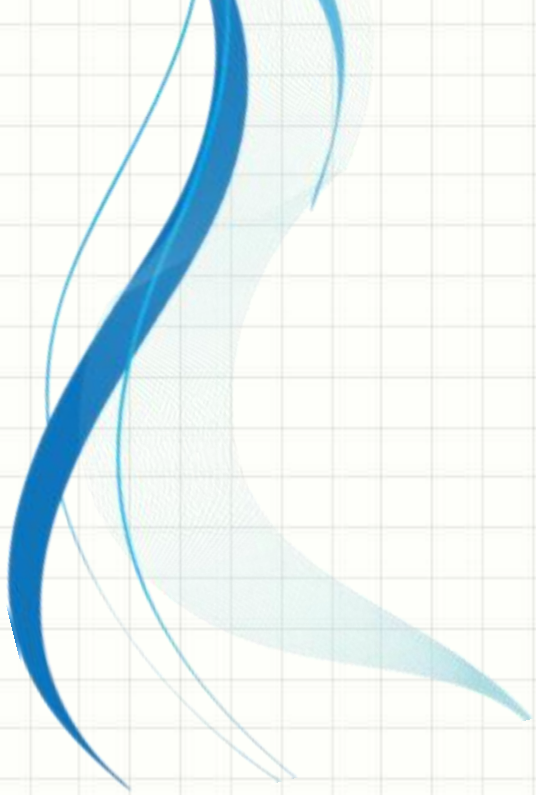
A GOVERNMENTAL BODY is any state or local agency, board, commission, committee, council, department or public body corporate and politic, ***that is created by constitution, statute, ordinance, rule or order.***

-Wis. Stat. § 19.82(1)



A **MEETING** is a 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.

-Wis. Stat. § 19.82(2)



In *State ex rel. Newspapers v. Showers*, 135 Wis.2d 77 (1987), the Wisconsin Supreme Court established a two-part test for determining whether a gathering is a Meeting, consisting of:

- The ***PURPOSE*** requirement
- The ***NUMBERS*** requirement

PURPOSE REQUIREMENT: looks to whether the purpose of the gathering is to engage in governmental business ***including discussion, decisions or information-gathering.***

-State ex rel. Badke v. Village Board of the Village of Greendale, 173 Wis. 2d 553 (1993).

- Interactions between members is not required.
- Not limited to formal or final decision making.

Does not include social or chance gatherings or a conference that is not intended to avoid the Open Meetings Law.

- ***BUT***, there is a rebuttable presumption that governmental business is being discussed if half or more of the body is present.

-Wis. Stat. § 19.82(2).

NUMBERS REQUIREMENT: looks to whether the number of members present are sufficient to determine the governmental body's course of action on the business under consideration.

- ***Quorums***

- A quorum is when there is a sufficient number of members for the body to take an action.

- ***Negative Quorums***

- A negative quorum is when there is a sufficient number of members to block action by on the body on a particular matter.

- ***Walking Quorums***

- A walking quorum is when there is as a series of gatherings among separate groups of the members of a body, each less than the quorum, who agree, passively or explicitly, to act in sufficient numbers to reach a quorum.

- **CONFERENCE CALLS**

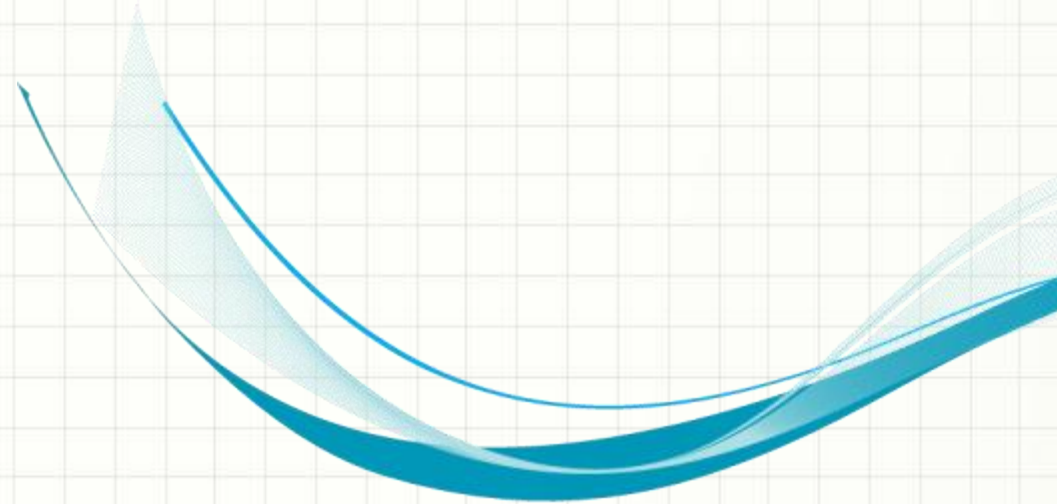
- Wis. DOJ has advised that meetings can occur if the purpose of the call is to conduct government business and a sufficient number of members are present to determine a course of action under consideration.

- **TEXT MESSAGES**

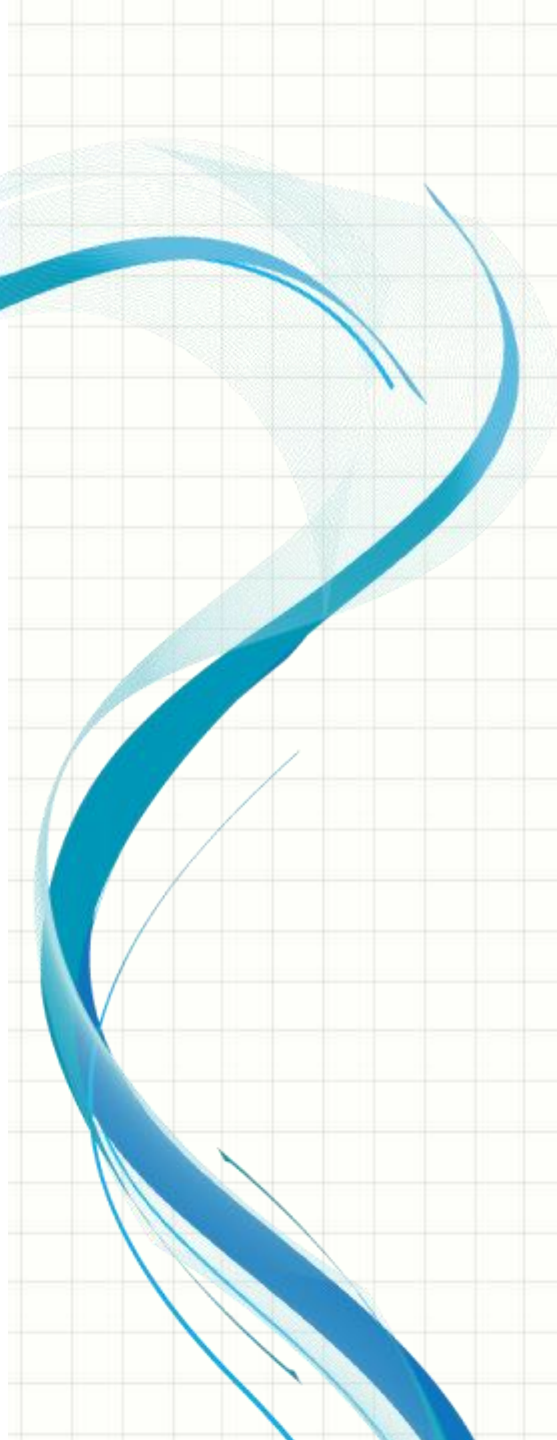
- Wis. DOJ has advised that text messages are analogous to conference calls in that all participants in the communication are present at the same time.

- **E-MAILS**

- Wis. DOJ strongly discourages, and advises that meetings can occur via e-mail depending on: (1) the number of participants; (2) number of communications re: subject; (3) time frame of the e-mails; and (4) extent of conversation-like interactions in the communications.



Meeting Requirements



All Open Meetings must be preceded by public **NOTICE** and must be held in a place that is open and **REASONABLY ACCESSIBLE** to members of the public.



NOTICE:

“Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.”

-Wis. Stat. § 19.84(2).

NOTICE CONTENTS

Notices must be *reasonably specific*. Determining what is reasonable requires a case-specific analysis. Look to:

- **Burden of providing more specificity;**
- **Matters of particular interest to the public; and**
- **Non-routine actions.**

-Generic designations are not sufficient (e.g. miscellaneous business, old business, new business, agenda revisions, other matters authorized by law).

-Body must notice that it intends to go back into open session after a closed session, if that is the intent.

TIMING OF THE NOTICE

Notices must be provided at least 24 hours in advance of the meeting, unless for good cause such notice is impossible or impractical.

If good cause exists, the notice should be given as soon as possible, and not less than two hours in advance of the meeting.

-Wis. Stat. § 19.84(3).



ACCESSIBILITY:

Open meetings must be held in a place reasonably accessible to members of the public and open to all citizens at all times.

Reasonable access does not mean total access, nor does it mean that a body can systematically exclude or arbitrarily refuse admittance to any individual.

RECORDING

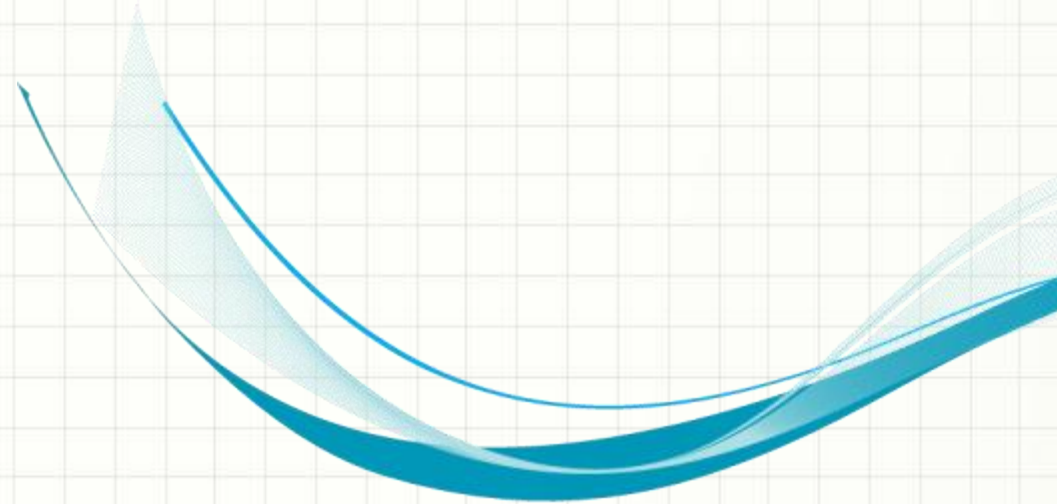
Citizens have the right to tape record or videotape meetings in open session, as long as doing so does not disrupt the meeting. Reasonable efforts must be made to accommodate anyone who wants to record, film or photograph an open session meeting

-Wis. Stat. § 19.90.

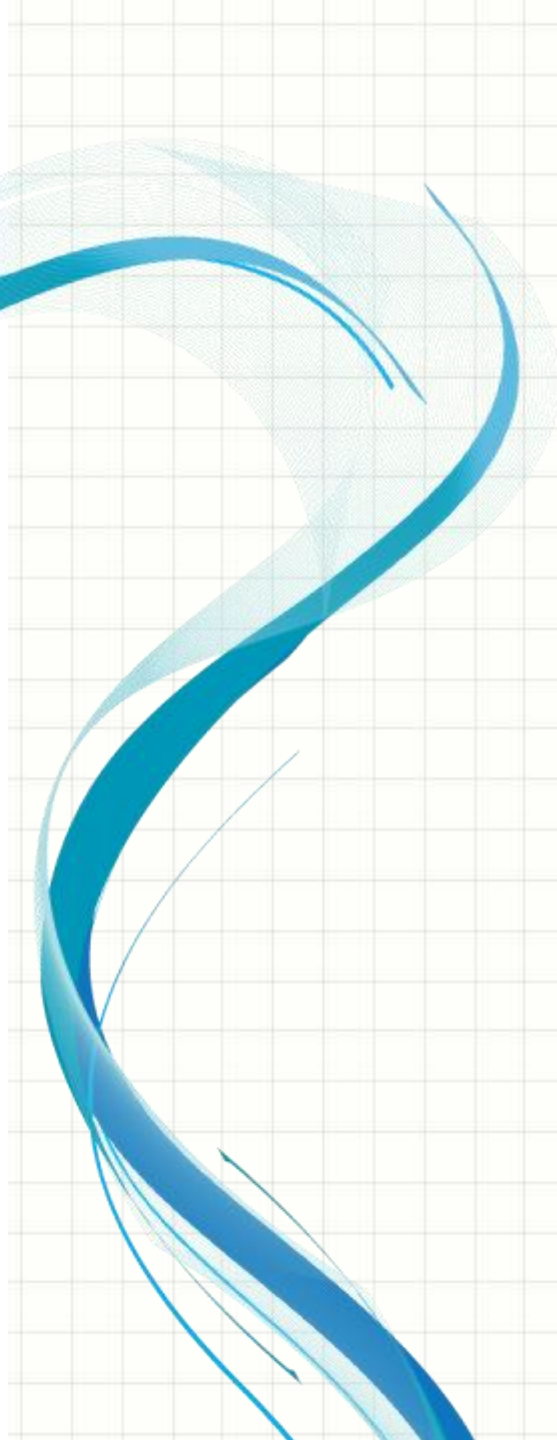
CITIZEN PARTICIPATION

The Open Meetings Law grants citizens the right to attend and observe meetings occurring in open session. It does not require that members of the public be allowed to speak or actively participate in the meeting. However, a body may set aside a portion of the meeting for public comment if it wishes to.

-Wis. Stat. §§ 19.83(2) and 19.84(2).

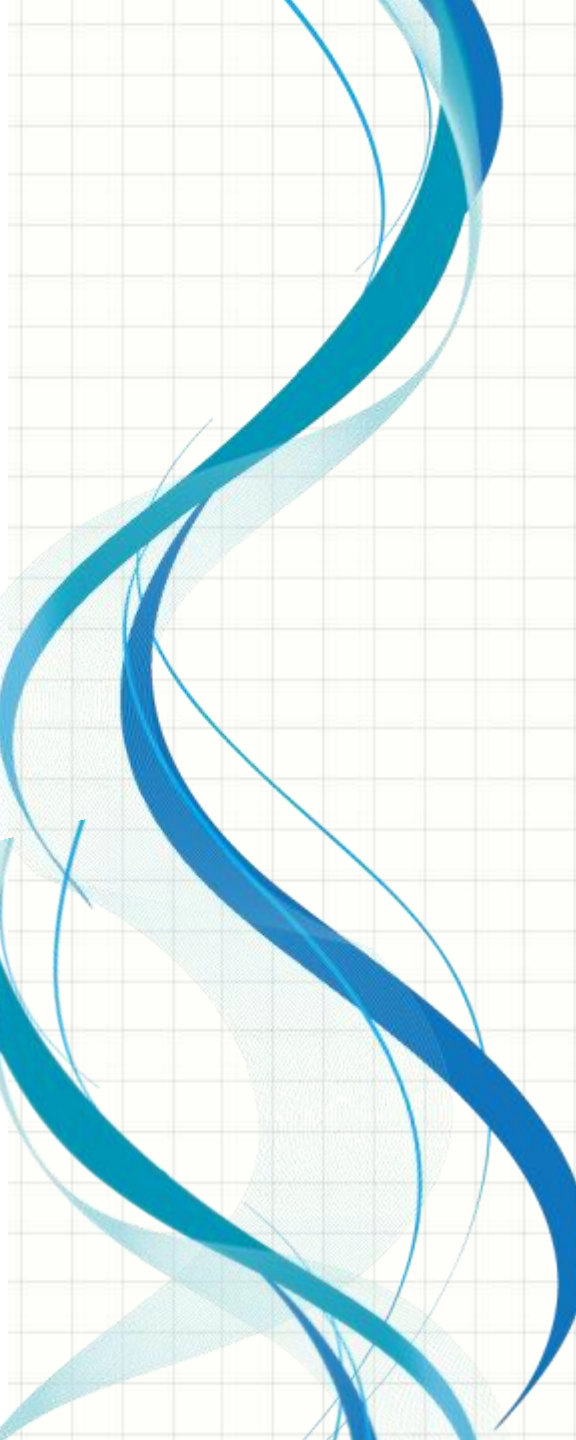


Open Session v. Closed Session



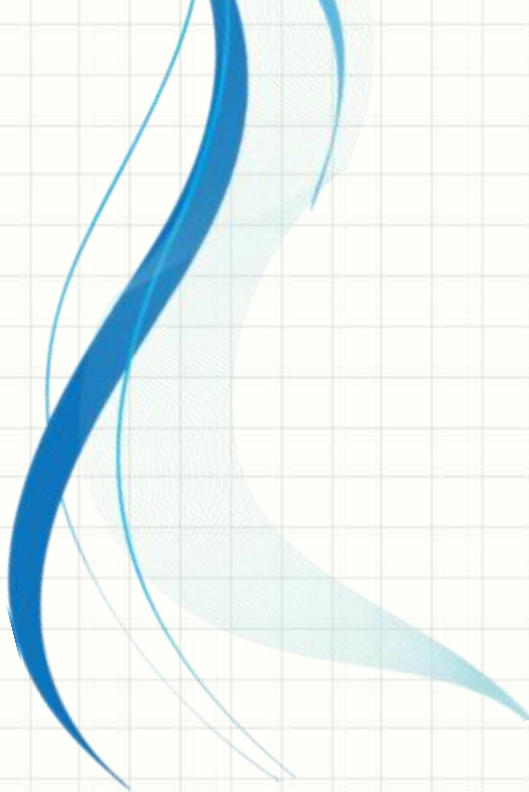
Open Session means a meeting which is held in a place reasonably accessible to members of the public and open to citizens at all time.

-Wis. Stat. § 19.82(1)



Every meeting of a governmental body must first be convened in open session. All business of any kind must be initiated, discussed and acted upon in open session unless one of the 11 exemptions in Wis. Stat. § 19.85(1) applies.

If one of the exemptions applies, bodies can motion and vote to go into ***Closed Session***.

A decorative graphic on the left side of the slide, consisting of several overlapping, wavy blue lines that curve from the top left towards the bottom right. The lines vary in opacity, with some being solid blue and others being semi-transparent, creating a layered, fluid effect.

No business may be taken up during the closed session except that relating to matters specifically noticed.

Bodies have wide discretion to admit anyone into a closed session whose presence the body determines is necessary for the business at hand.

AUTHORIZED CLOSED SESSIONS

-Judicial or quasi-judicial hearings: deliberations on a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body can be held in closed session. Wis. Stat. § 19.85(1)(a).

-Employment and Licensing Matters: for “[c]onsidering dismissal, demotion, licensing or discipline of any public employee or a person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter...” Wis. Stat. § 19.85(1)(b).

-Consideration of employment, promotion, compensation and performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility. Wis. Stat. § 19.85(1)(c).

-Considering extended supervision, probation, parole or strategy for crime detection or prevention: except during parole commission hearings designed for victims or family members to have direct input in parole decision making process for certain crimes. Wis. Stat. § 19.85(1)(d).

-Conducting public business with competitive or bargaining implications: for “[d]eliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.” Wis. Stat. § 19.85(1)(e).

-Deliberating to discuss unemployment insurance. Wis. Stat. § 19.85(1)(ee).

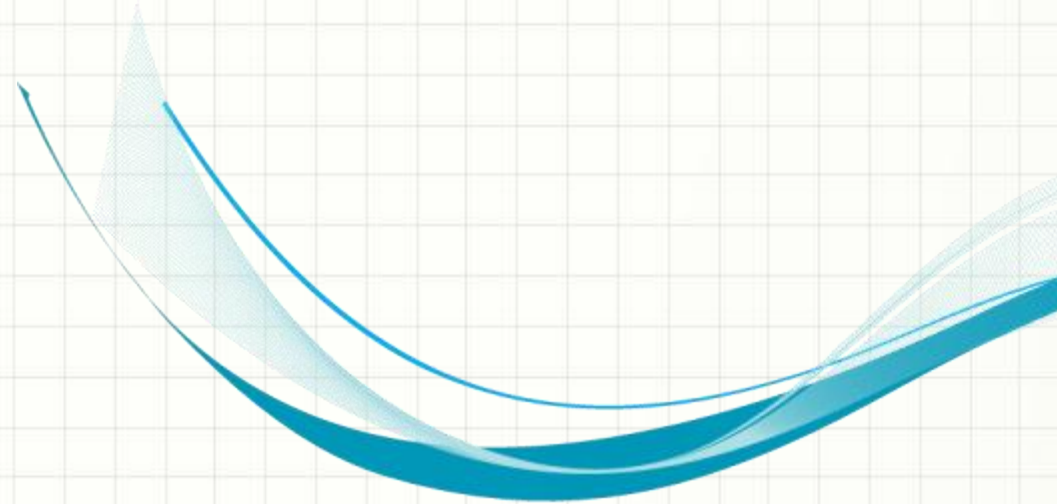
-Deliberating to discuss worker's compensation issues. Wis. Stat. § 19.85(1)(eg).

-Deliberating on issues arising out of location of burial sites. Wis. Stat. § 19.85(1)(em).

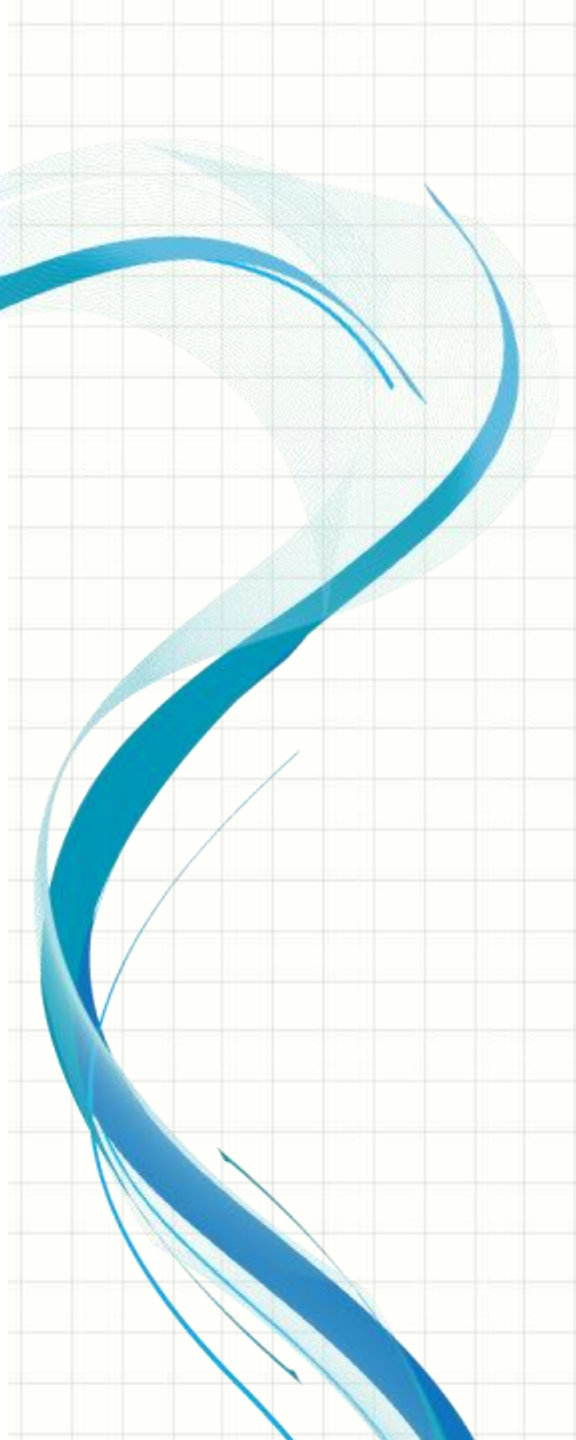
-Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation upon any person referred to in such histories or data, or involved in such problems or investigations. Wis. Stat. § 19.85(1)(f).

-Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. Wis. Stat. § 19.85(1)(g).

-Consideration of requests for confidential written advice from the elections commission or the ethics commission or from any county or city ethics board. Wis. Stat. § 19.85(1)(h).



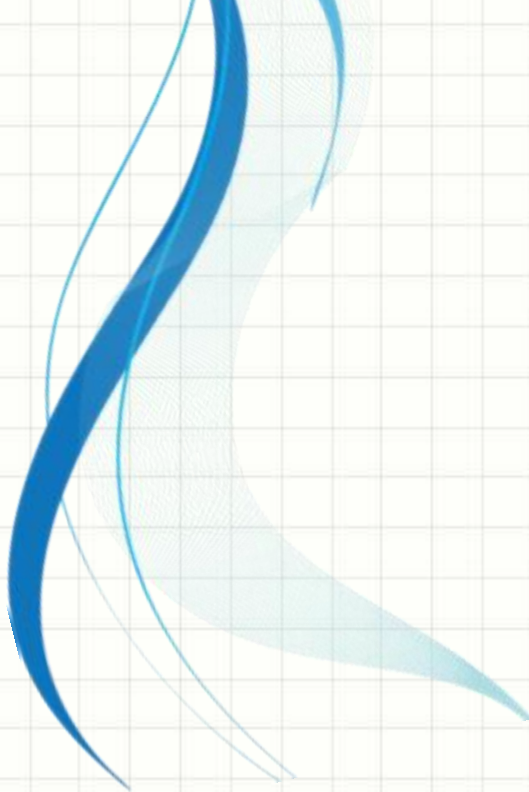
Penalties



Any member of the governmental body who “***knowingly***” attends a meeting in violation of the Open Meetings Law is subject to a forfeiture between \$25 and \$300 for each violation. **This is personal liability.**

“***knowingly***” means not only positive knowledge of the illegality of a meeting, but also the awareness of the high probability of the meeting’s illegality or conscious avoidance or awareness of the illegality.

State v. Swanson, 92 Wis. 2d 310 (1979).



Courts may award any other appropriate legal or equitable relief, including declaratory and injunction relief.

Any action taken at a meeting of a governmental body in violation of the Open Meetings Law is voidable.

However, only after a court finds that the public's interest in enforcement of the Open Meetings Law outweighs the public interest in sustaining the validity of the action taken.

Statute of Limitations on actions to enforce the Open Meetings Law is **two years** after the cause of action accrues.



PUBLIC RECORDS LAW TRAINING

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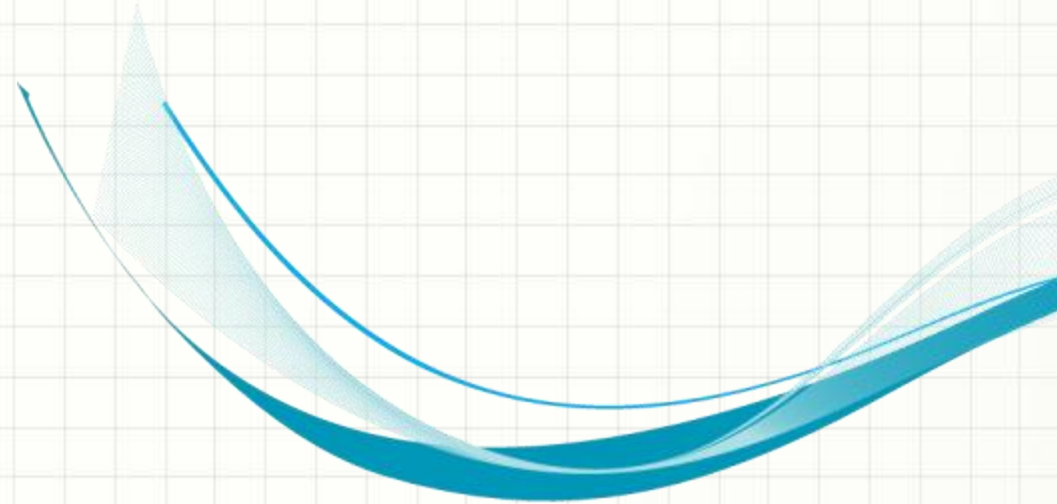
OVERVIEW

Public Policy

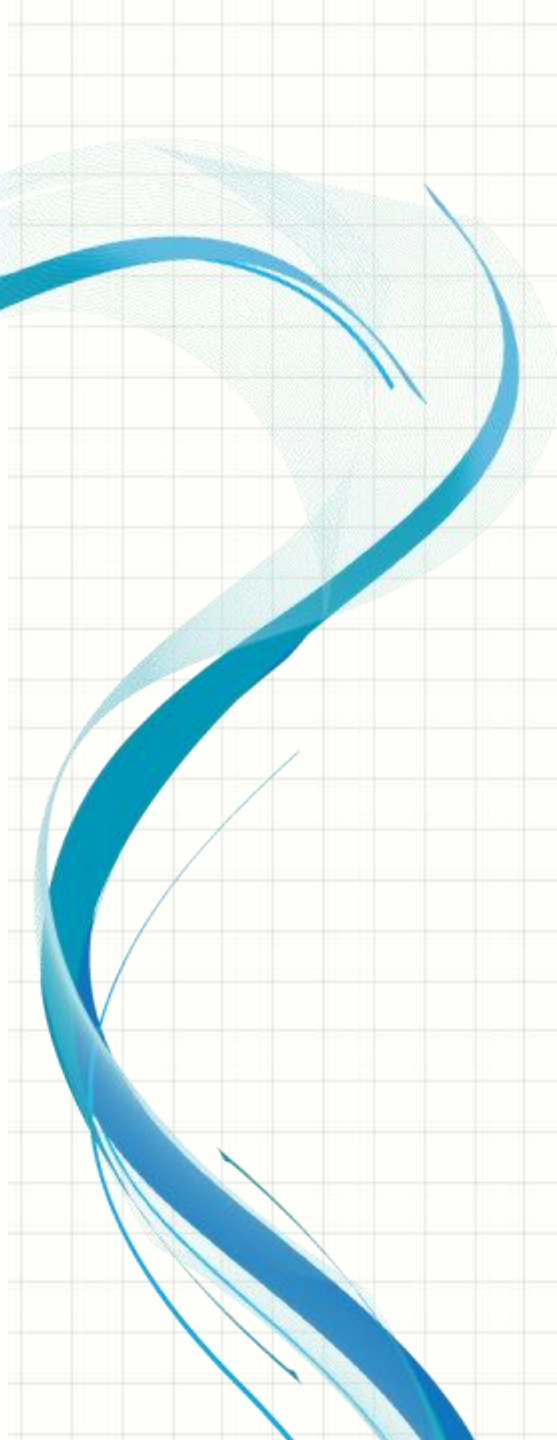
What is and is not a Record?

Receiving and Responding to a Request

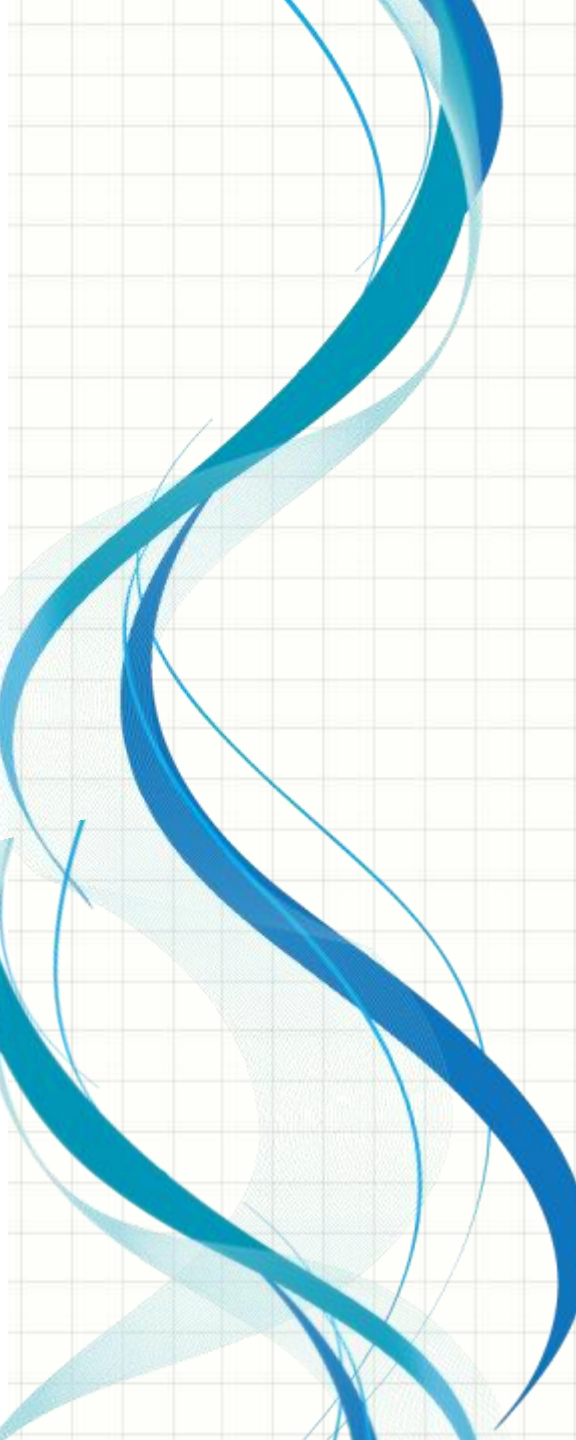
Penalties



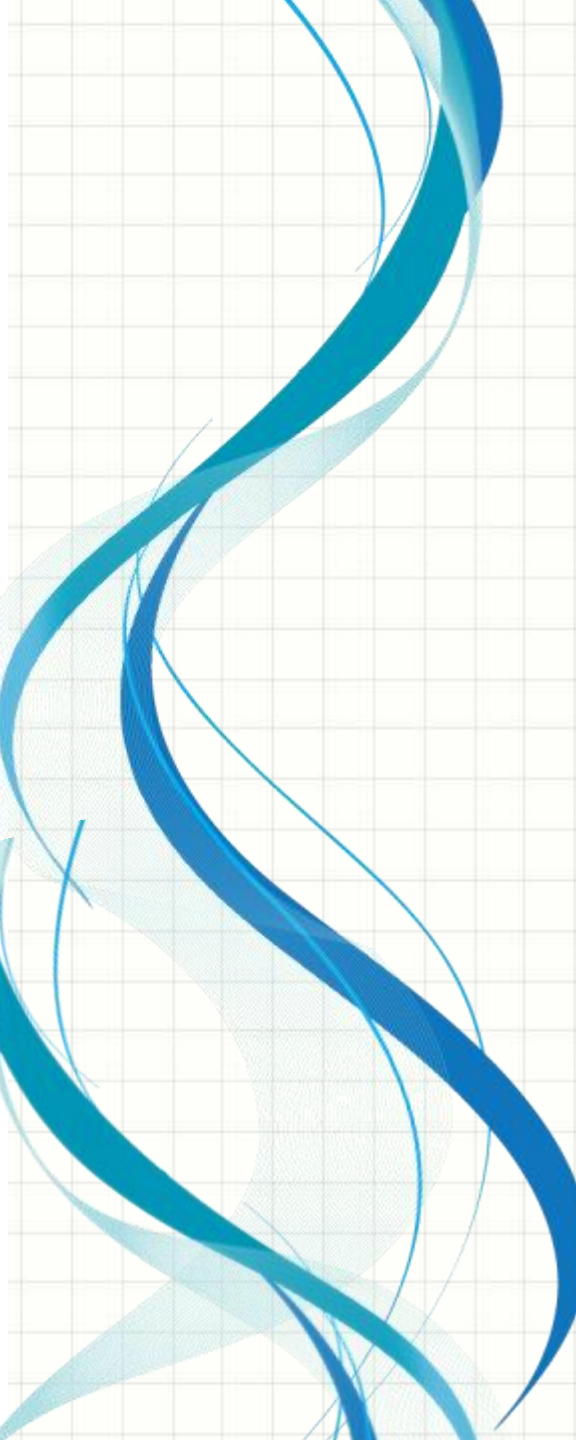
Public Policy



“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...**”

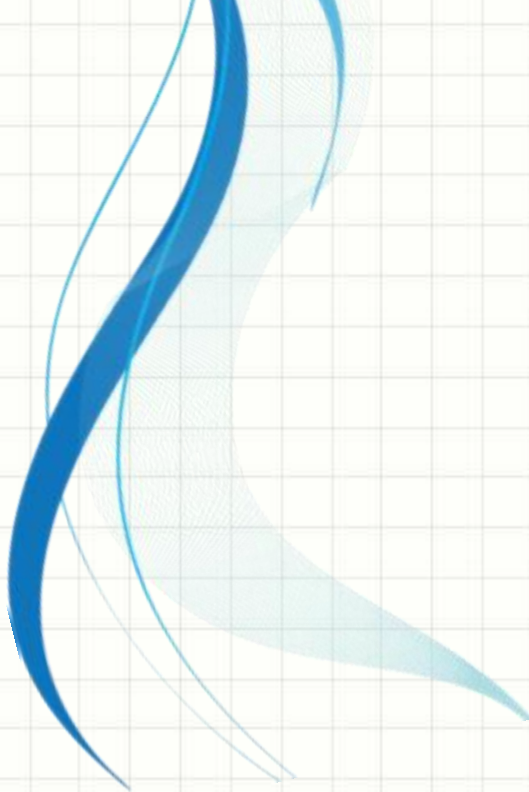


...Further, providing persons with such information is declared to be an **essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information...**

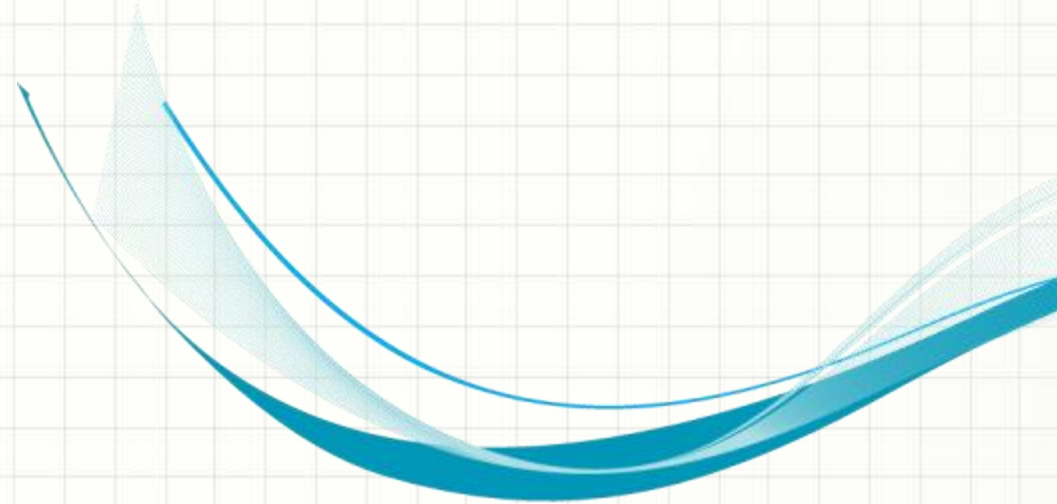


...To that end, ss. 19.32 to 19.37 shall be construed in every instance with a **presumption of complete public access, consistent with the conduct of governmental business.** The denial of public access generally is contrary to the public interest, and **only in an exceptional case** may access be denied.”

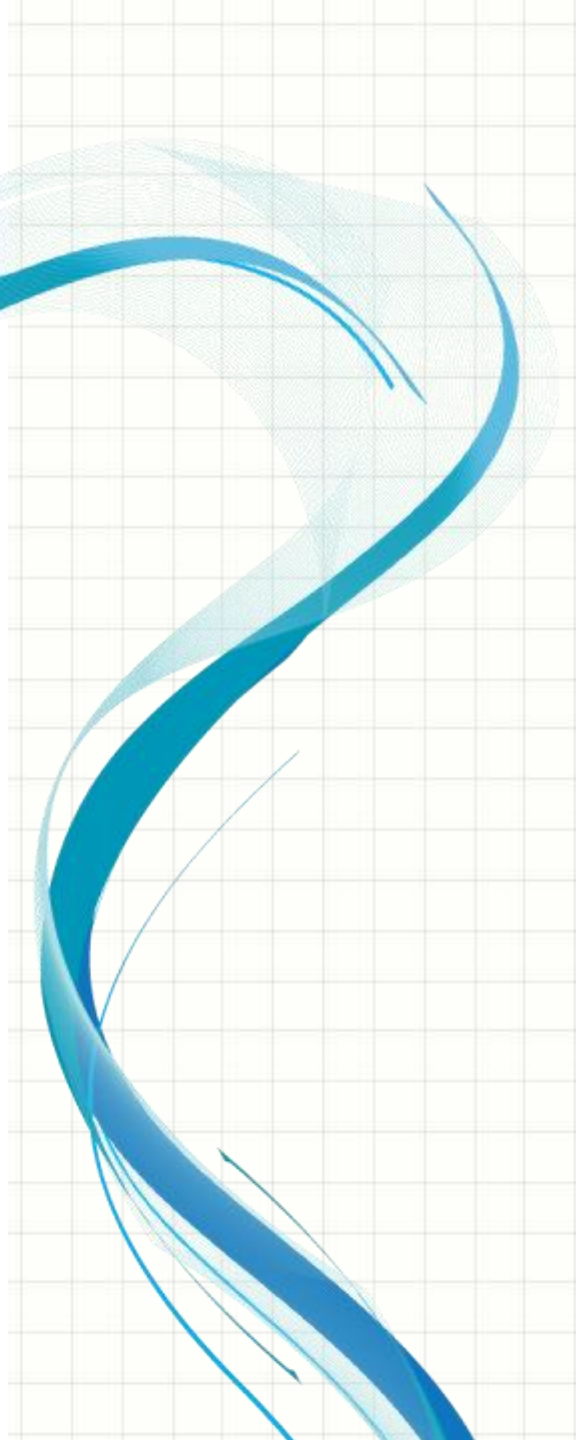
Wis. Stat. § 19.31

- 
- An exceptional case exists when:
 - There is a statutory or common law preclusion to disclosure, or
 - The facts are such that the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure, notwithstanding the strong presumption favoring disclosure.

Hempel v. City of Baraboo,
2005 WI 120, ¶ 63.

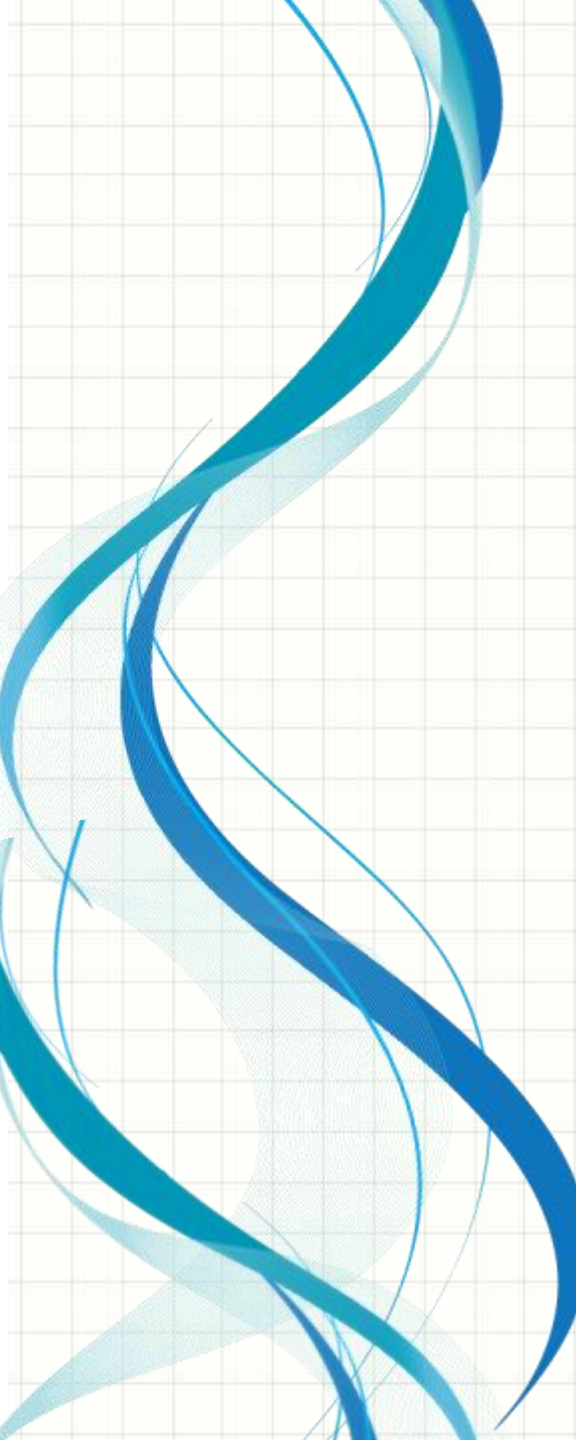


What Is and Is Not a Record?



A **RECORD** is defined as “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 kept by an authority.”

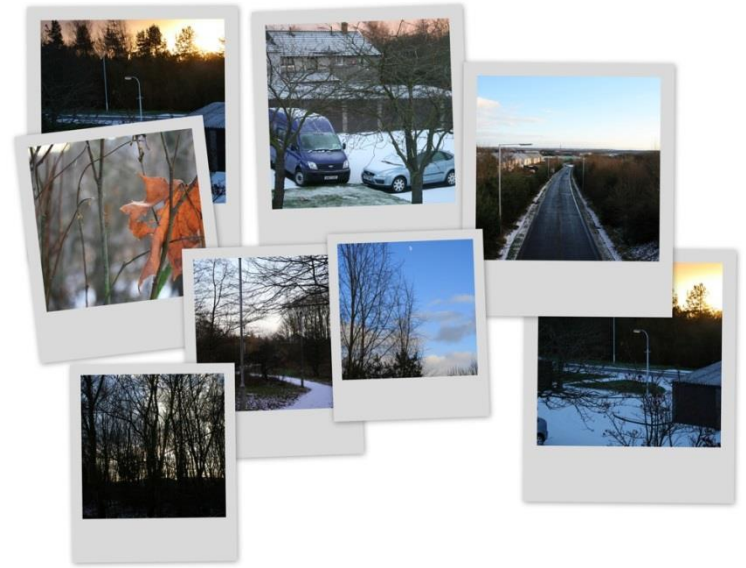
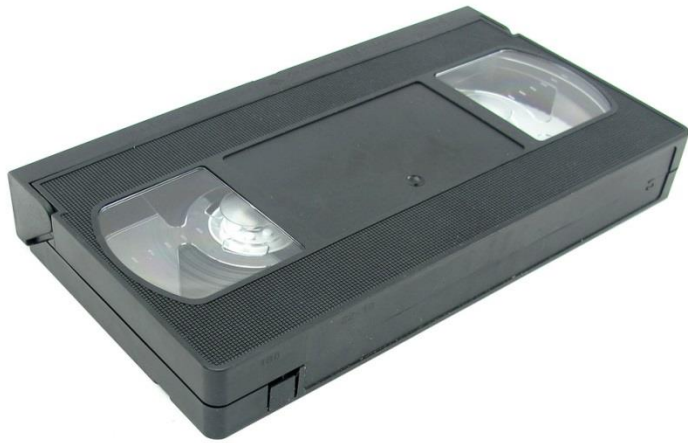
Wis. Stat. § 19.32(2).

- 
- Not everything a public official or employee creates is a public record. It must be created or kept in connection with an **official purpose or function of the agency.**
 - Attorney General's Office advises that **content, not medium format or location,** determines whether something is a "record."

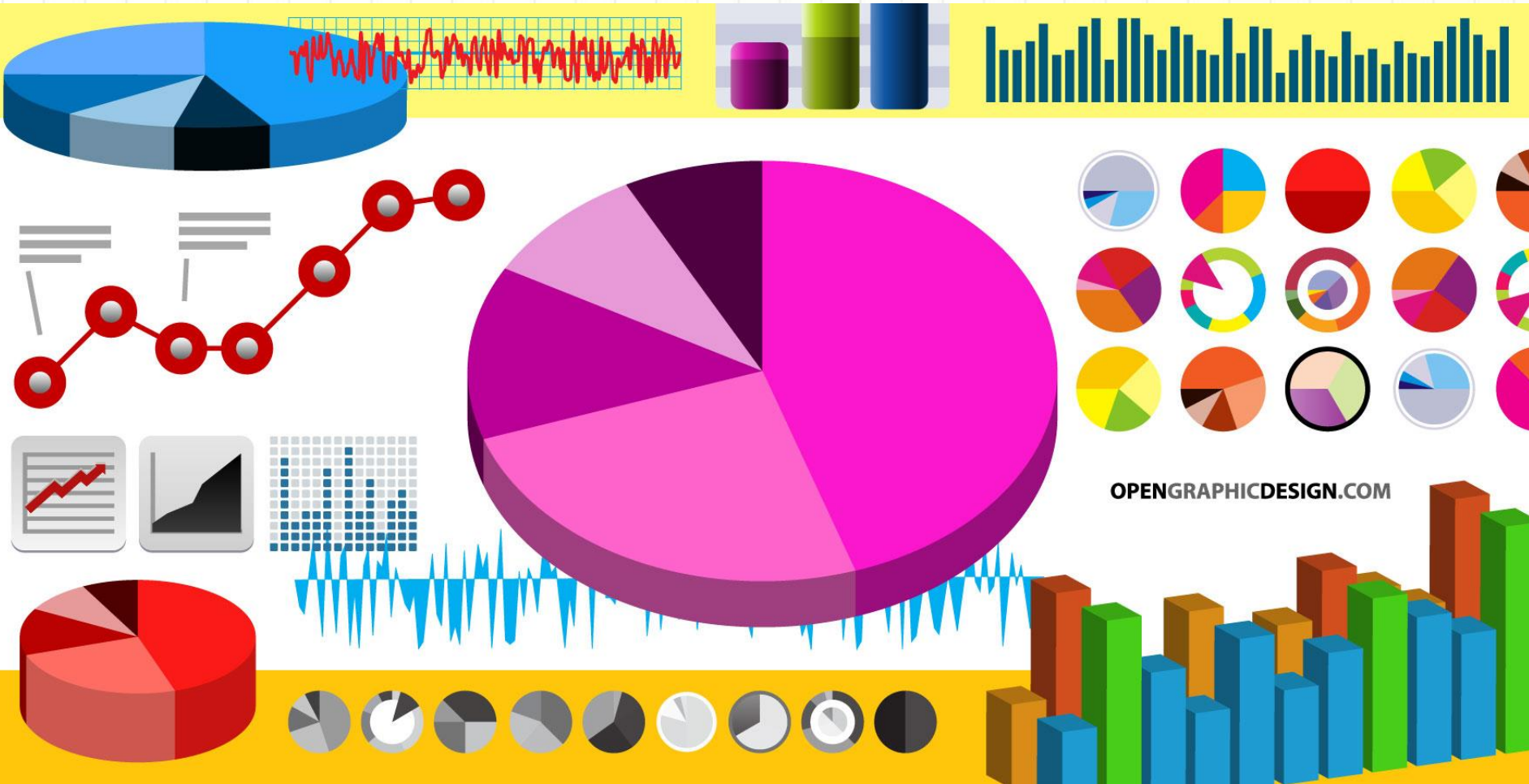
Handwritten, Typed or Printed Documents



Photos, Films, DVDs and Tape Recordings



Charts or Graphs



OPENGRAPHICDESIGN.COM

Maps



Public Records Requests Themselves



Contractor's Records



E-Mails and Electronic Documents

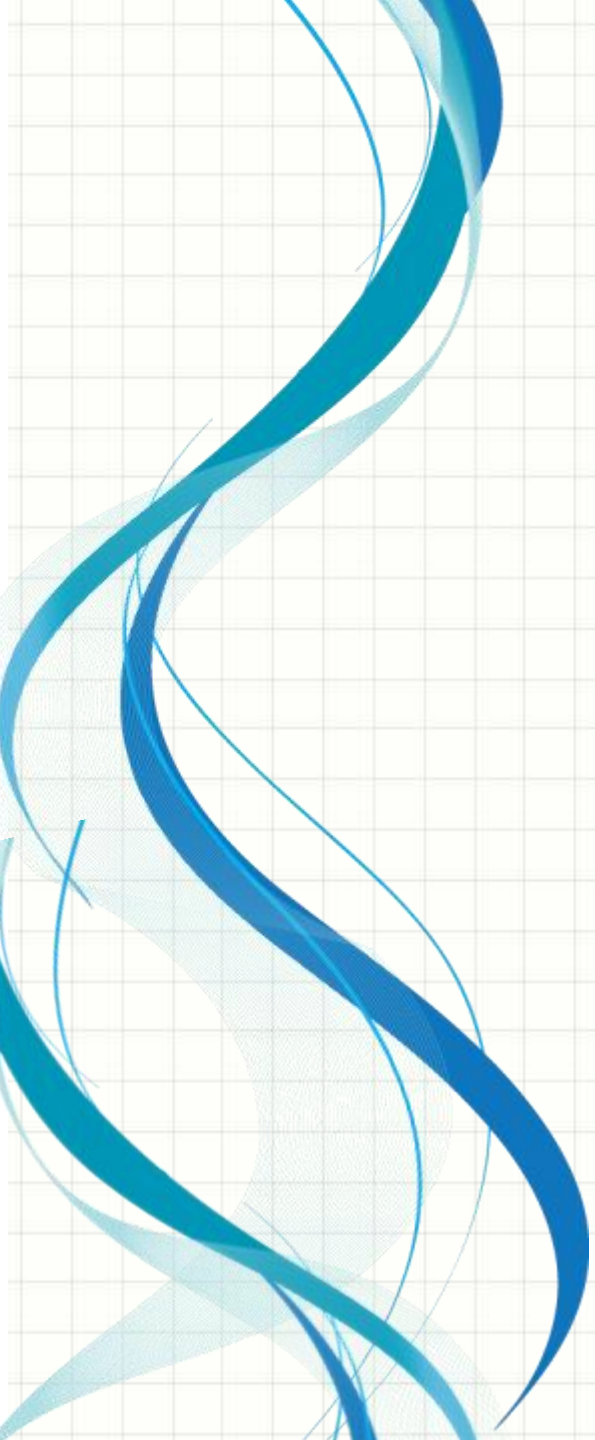


Text Messages



Social Media Postings



- 
- Millennial Task Force related e-mails, text messages, and social media postings are records, even they are sent, received or posted on personal devices or accounts.
 - Such records must be retained, and may be subject to disclosure under the Public Records Law.
 - A good rule of thumb for managing MTF related e-mails, text messages, and social media postings is to forward them to a work account at the same time that you send, receive or post them.

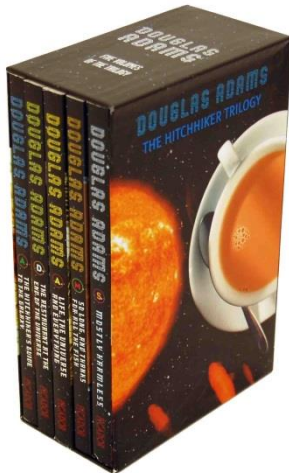
What Is NOT A Record

THE FUN GATSBY
 THE NICE GATSBY
 THE COOLEST GATSBY
 THE GABBY GATSBY
 THE GATSBY GATSBY ←
 THE #1 GATSBY
 THE CRABBY CHUNKY GATSBY
 THE LAST GATSBY



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Maths
 eats
 brains.
 Yum!
 Gross!

$v_z =$ Zombie Velocity m/sec

$x =$ distance m

$t =$ time sec

→ 10m

$$v_z = \frac{x}{t}$$

$$v_z = \frac{10 \text{ m}}{16 \text{ sec}} = 0.625 \text{ m/sec}$$

kph

To convert to kph

$$v_z = \frac{0.625}{1000} \times 60 \times 60$$

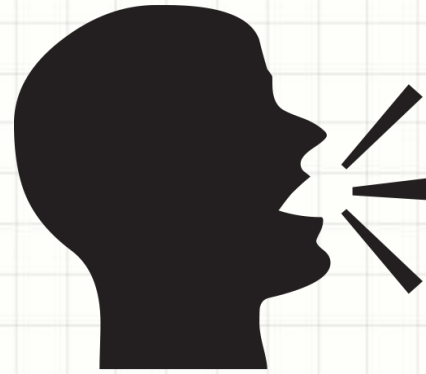
$$= 2.25 \text{ kph} \quad (1.4 \text{ mph})$$

~~1.4 mph~~

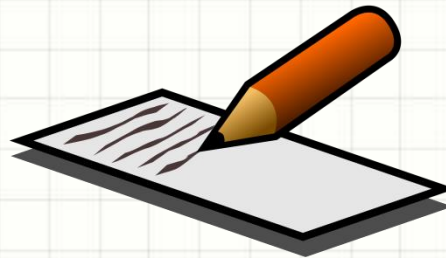




Receiving and Responding to a Request



A records request can be made either orally or in writing.



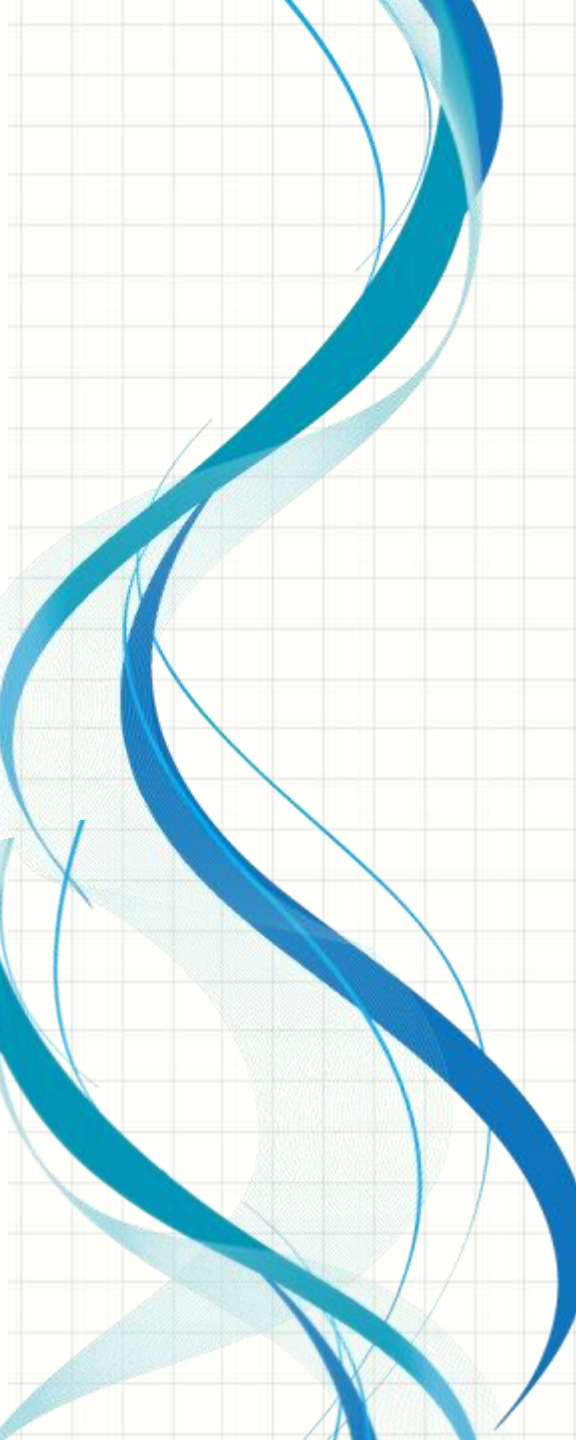


A requester can ask to inspect OR copy records.





**RESPONDING TO
PUBLIC RECORDS
REQUESTS IS
MANDATORY**



**EACH REQUEST
MUST BE ANALYZED
ON A CASE-BY-CASE
BASIS**



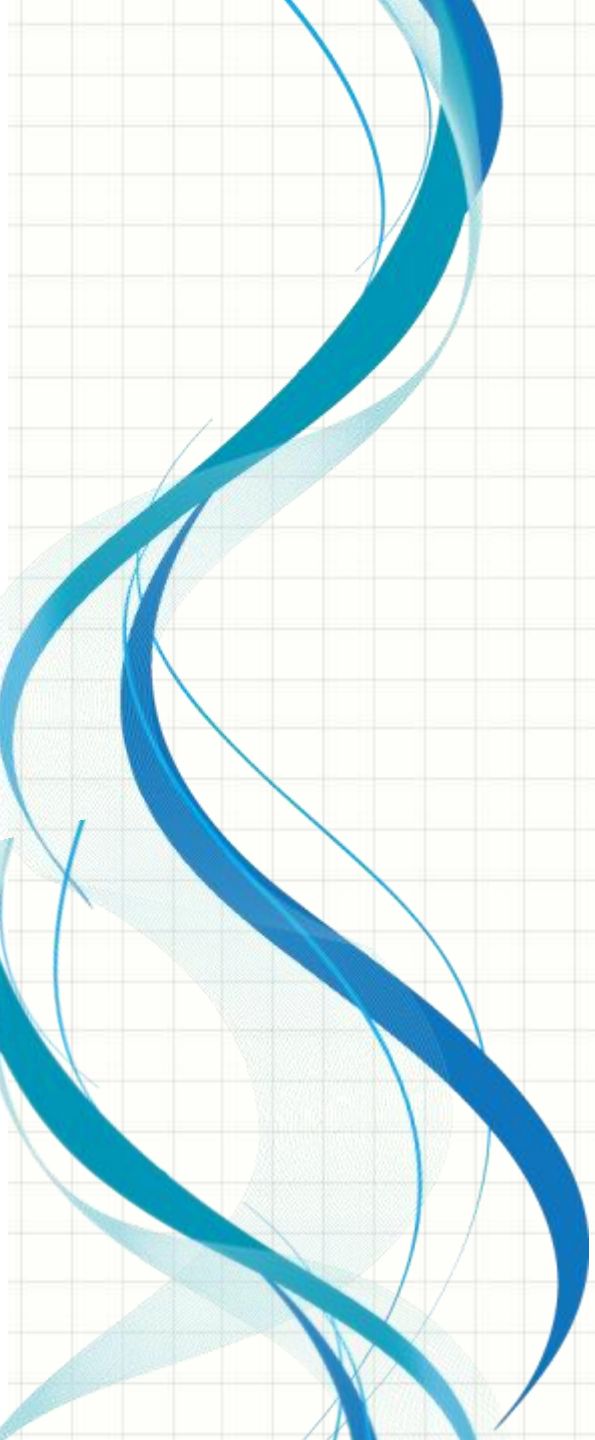
**WRITTEN REQUESTS
MUST BE RESPONDED
TO IN WRITING.**

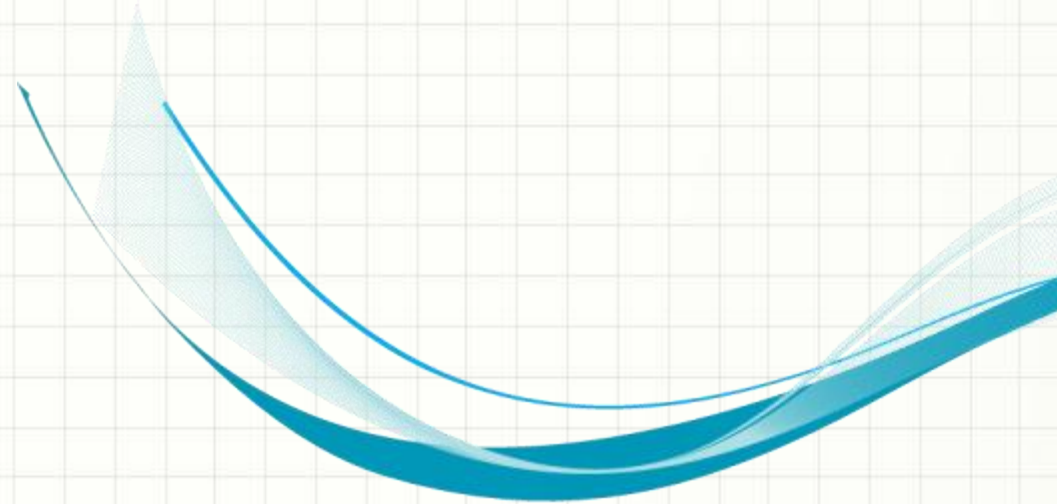


TIMING OF THE RESPONSE:

- The DOJ has stated that requests for public records should be given a high priority.
- There is no time limit specified in the statutes or common law. A request must be responded to “***as soon as practicable and without delay.***” Wis. Stat. § 19.35(4)(a).
- Requesters are not entitled to an immediate response.

Journal Times v. City of Racine Bd. of Police & Fire Comm’rs,
2015 WI 56, ¶ 87

- 
- DOJ recommends that a reasonable time period for responding to simple requests for a limited number of easily identifiable records is 10 working days.
 - DOJ also recommends that for requests that are not simple, what's reasonable depends on the nature of the request, the staff and other resources available to process the request, the extent of the request, and related considerations.



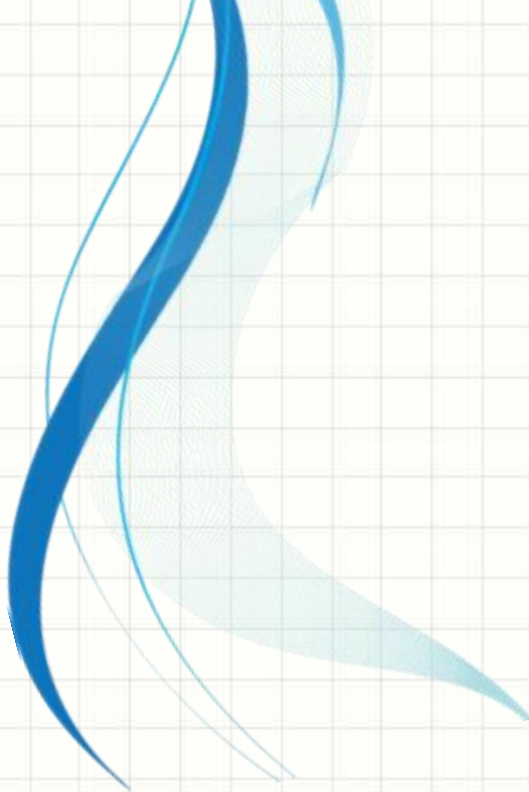
Penalties



MANDAMUS

- *Mandamus* is the exclusive remedy provided by the legislature to enforce the Public Records Law.

- If a court determines that records were withheld or redacted improperly, the requester can be awarded:
 - Attorneys fees (unless no attorney – not available for pro se).
 - Damages of not less than \$100 and other actual costs incurred.
 - Civil forfeiture of not more than \$1,000 (even if no damages).
 - Punitive damages.

- 
- Statute of Limitations on actions to enforce the Public Records Law is **three years** after the cause of action accrues.
 - There are criminal penalties for “destruction, damage, removal or concealment of public records with intent to injure or defraud,” or “alterations or falsification of public records.”
 - Fine not to exceed \$10,000, or imprisonment not to exceed 6 years, or both.