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**A. Authority**

Section 19.31, Wisconsin Statutes, provides for citizen access to information regarding the affairs of government and the official acts of government officers and employees. State agencies, as the custodians of official records, shall operate with the presumption of complete public access consistent with the conduct of governmental business.

Wis. Stats. § 19.32(2)., defines a “record,” in part, as any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or presented, regardless of physical form or characteristics, which has been created or is being kept by an authority. Records created and maintained by this department are state property. A “record” does not include drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published material in the possession of an authority other than a public library which are available for sale or which are available for inspection at a public library.

**B. Records Custodians**

The state superintendent, deputy state superintendent, executive assistant, and assistant state superintendents shall serve as custodians for records under their control and shall be ultimately responsible for responding to requests for review of records. Division directors or their designees shall handle requests for access to records under the supervision and direction of the respective records custodian and shall consult with the records custodian or legal counsel as needed in responding to records requests.

Records custodians shall be knowledgeable of the purpose for which records under their control are maintained, the general contents, and the location of such records. Reasonable restrictions may be determined and imposed by the records custodians on the manner of access to an original record if the record is easily damaged or irreplaceable.

A listing of records custodians, division directors, and types of records shall be available at the DPI Reception Desk, GEF 3.

**C. Access to Employee Records**

For purposes of the open records law, Wis. Stats. § 19.32(1bg) defines “employee” as any individual who is employed by an authority (such as the Department of Public Instruction), other than an individual holding a state public office as defined in §19.42(13). Thus, for the purposes of the open records law, all employees of the department, including project employees and LTEs, are “employees,” except for the following positions (state public office holders):

- State Superintendent
- Deputy State Superintendent
- Executive Assistant
- Special Assistant (stenographer)
- Assistant State Superintendents (division administrators)



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1. Unless otherwise authorized or required by statute, the following information about department “employees” will not be released in response to an open records request (unless the employee has consented to the release), pursuant to §19.36(10)(a) – (d).
  - a. The employee’s home address, home electronic mail address, home telephone number or social security number.
  - b. Information related to a current investigation of a possible criminal offense or possible misconduct prior to the disposition of the investigation.
  - c. Information pertaining to the employee’s employment examination, except an examination score if access to that score is not otherwise prohibited.
  - d. Information relating to one or more employees that is used for staff management planning, including performance evaluations, judgments or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference or other comments or ratings relating to employees.
2. Unless otherwise authorized or required by statute, the home address, home electronic mail address, home telephone number or social security number of the department state public officer holders, except for the State Superintendent, will not be released in response to an open records request (unless he or she has consented to the release), pursuant to §19.36(11).
3. If the department receives a request for “employee” records that are the result of an investigation into a disciplinary matter or possible employment related violation, and the investigation has been disposed of, the department will conduct the balancing test to determine whether the record must be released. If the department decides to release the information, it will notify the employee by personal service or certified mail, of the decision to release the information, a brief description of the records and a description of the rights of the employee to attempt to prevent the release of the information.

If an employee receives such a notice, he or she shall have 5 days after receipt of the notice to provide written notification to the department of his or her intent to seek a court order restraining the release of the records. If the employee decides to seek court relief, he or she must file an action with the circuit court naming the department as the defendant, within 10 days of receiving the notice from the department. While the case is pending in either circuit or appellate court, the department will not release the records.

If the department does not receive written notification of intent to seek court relief, the department will release the records 12 days after sending the notice to the employee.

4. Unless otherwise authorized or required by statute, if the department receives a request for records related to a state public office holder, it will conduct the balancing test to determine whether the record must be released. If the department determines to release the records, the department will provide the person written notice by personal service or certified mail of the decision to release the records, a brief description of the records and a description of his or her rights to augment the record. If a state public office holder wishes to augment the record after receiving such notice, he or she must submit the written comments and documentation within 5 days of receiving the notice of intent to release the records.



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#### **D. Responding to Requests**

Oral or written requests for access to records may be made at any time during normal business hours (Monday-Friday, 7:45-11:45 a.m. and 12:30-4:30 p.m.). A request shall be responded to as soon as practicable. Delaying access to a record or failing to provide a record may result in a penalty to the department. An area shall be provided for the requester to inspect records.

The department typically receives two kinds of records requests. The routine request that the staff person gets on a regular basis and broader requests that require assistance from other teams. Staff shall inform their supervisors of all records requests. When a request is non-routine, it should be forwarded or copied to the teams that it involves as soon as it is received. This includes notifying the department legal counsel. Because the law requires the department to respond to open records request as soon as practicable and without delay, it is imperative that the appropriate assistance is sought as soon as the request is received.

The department legal counsel will assist in responding to records requests or interpret the provisions of the open records law. The department forms and records coordinator can provide technical assistance, including determining the location of records stored off-site and directing the requester to the appropriate custodian. Requests from researchers and all requests for individual pupil data, including aggregate pupil data if the number of pupils in a given cell or group is five or less, shall be referred to the Chief Information Officer, Division for Libraries, Technology, and Community Learning (see Departmental Policy Bulletin 4.315). Requests for personnel information shall be referred to the Human Resources Director, Division for Finance and Management.

#### **E. Fees**

The records custodian shall collect fees that may be assessed for reproducing records. In general, the fee may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record. The agency may not charge a fee for locating a record unless the actual cost is over \$50. If a record contains information subject to disclosure and other information not subject to disclosure, the agency must separate one from the other, disclosing the one and withholding the other. The agency may charge the actual, necessary and direct cost of this redaction.

Fees for providing copies of records, not including sales tax, are as follows:

1. Fifteen (15) cents per page for black and white or color photocopies (10 copies or more).
2. The actual, necessary, and direct labor cost for transcription, photocopying, and shipping. This amount is calculated by multiplying the time spent to comply with the records request times the hourly rate and fringe benefits of the employee performing the work.
3. The actual, necessary and direct cost for postage, shipping or other delivery method.
4. The actual, necessary, and direct cost for locating a record if the cost is \$50 or more.
5. The actual, necessary, and direct cost for computer programming and processing time.

Sales tax shall be charged unless the requester is exempted by law from paying such tax.



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## F. Denial of a Request

Legal counsel must be consulted before a request for records is denied. When a request is denied in whole or in part, regardless of the method used by the custodian in arriving at that decision, the requester must be given specific reasons for denial. Following are general guidelines for denying requests:

### 1. Criteria for Denial

- a. The request does not reasonably describe the requested record or is without a reasonable limitation as to subject matter or length of time represented by the records, and the requester does not provide clarification.
- b. The record is specifically exempted from disclosure by state or federal law, s. 19.36.
- c. The custodian determines that the harm to the public interest in disclosing the record outweighs the presumed benefit to the public interest that would result from record disclosure. The “balancing test” may be used only when there is no law controlling records disclosure other than the open records law under Chapter 19, Wisconsin Statutes. If there is a need to restrict access at the time the request is made, the custodian may consider the exemptions to the open meetings law under §19.85.
- d. The request involves materials that are not records under §19.32(2), or by judicial decision or attorney general’s opinion. A computer program is not subject to examination or copying, but the material or data used as input and the product are subject to the right of inspection and copying.
- e. The record involves advice from legal counsel concerning strategy, opinions, conclusions, or legal theories with respect to litigation in which the department is or is likely to become involved.
- f. The release of records would impede an open investigation.

Exceptions to the public record law should be narrowly construed. (*Hathaway v. Green Bay School District*, 116 Wis. 2d 388 (1984))

### 2. Procedures for Denial

- a. If an oral request is made, the custodian may deny the request orally unless a demand for a written statement of the reasons for denial is made by the requester within five business days of the oral denial.
- b. If a written request is denied, the custodian shall state in writing the reasons for denial. The denial must contain all the reasons for denial, because the agency may not be allowed to add reasons if the denial is challenged in court. The denial letter also must notify the requester of the following rights:
  - (1) Under §19.37(1), the requester may bring an action for a writ of mandamus asking a court to order release of the record. Under the same statute, the requester also may request, in writing, the district attorney of the county where the records are located or the attorney general to bring an action for a writ of mandamus asking a court to order release of the record.
  - (2) The requester may wish to consult a private attorney concerning other remedies.

Questions regarding the open records law and this policy should be directed to the Office of Legal Services.

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