

OPEN GOVERNMENT

IN WISCONSIN

A Citizen's Guide
to
Open Meetings
and
Open Records



League of Women Voters of Wisconsin, Inc.

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Wisconsin's citizens believe in open government. Wisconsin's legislators have agreed that the public is, in general, entitled to full and complete information regarding the affairs of government. Chapter 19 of the Wisconsin Statutes contains the requirements for open meetings (subchapter IV) and open records (subchapter II). These laws have been in effect since 1976 and 1982 respectively.

Open meetings means that meetings of state and local governmental bodies will be open to the public and held in public places with at least 24 hours notice given. Open records means that public documents are open to inspection and copying by the public. There are some restrictions and exemptions within each law. Anyone may request advice from the Attorney General about how these laws apply to specific situations.

OPEN MEETINGS

Definitions

Governmental body means a state or local agency, board, commission, committee, council, department, or public body; a governmental or quasi-governmental corporation; or a subunit of any of these.

Meeting means the convening of members of a governmental body to exercise the responsibilities, authority, power, or duties of that body. If one half or more of the members are present, the gathering is a meeting. A gathering of fewer than half the members is also a meeting if that minority has the potential to determine the outcome of the issue being considered.

Open session means a meeting accessible to the public and open to all citizens at all times.

Descriptions

Procedure Every meeting of a governmental body must be held in open session. All discussion must be in open session and all action of any kind must be begun, debated, and acted upon in open session. Business is allowed to be conducted in closed session only on certain subjects. No member of a governmental body can be excluded from any meeting of that body.

Public Notice All public notices must contain the time, date, place, and subject matter of the meeting. Subject matter must include a description of items intended for a planned closed session. Public notice must be given at least 24 hours before the meeting time. In rare cases, less notice may be given, but never less than 2 hours. A separate notice is to be given for each meeting. In general, public notice means notifying the news media as well as the general public.

Closed Sessions A governmental body must follow certain procedures to meet in closed session. There must be a motion to go into closed session. Each member's vote on the motion must be recorded. The motion must pass by a majority vote. The presiding officer must announce the motion to those present at the meeting. The presiding officer must state the nature of the business to be considered in the closed session and the exemption which authorizes the closed session. No other business may be conducted at the closed session.

To hold an open meeting within 12 hours of the end of a closed session, public notice must have been given for it at the same time as the notice for the meeting prior to the closed session.

Any unit of government meeting to engage in collective bargaining is excluded from open meeting provisions. Final ratification or approval of collective bargaining agreements must be in open session.

A closed session can be held for any of these purposes:

- deliberating after a trial or hearing
- considering dismissal, demotion, licensing, or discipline of, investigation of charges against, or granting or denying tenure to public employees or licensed persons. The person involved must be notified and has the right to demand an open session
- considering employment, promotion, compensation, or evaluation of any public employee under the body's jurisdiction
- discussing specific probation or parole situations or strategies for crime detection or prevention
- purchasing public properties, investing funds, or other business where competitive or bargaining reasons require a closed session
- preliminary consideration of specific personnel

problems or investigation of charges which would negatively affect the reputation of the person involved

- conferring with legal counsel about current or potential litigation
- considering requests for confidential written advice from an ethics board
- discussing a burial site, as defined in S. 157.70, if disclosure of the location could result in disturbance of the site.

Legislature Whenever the open meetings law conflicts with a rule of the Legislature, the rule is followed. Open meeting provisions do not apply to partisan caucuses. Public notice requirements do not apply to meetings for the purpose of scheduling legislative business.

Voting A secret ballot can be used only to elect officers of the body. All other votes are public and a member may demand that the vote of each member be recorded. Motions and roll call votes must be recorded, preserved, and available to the public.

Penalties The penalty for a member of a governmental body who violates the open meetings law is a forfeiture of \$25 to \$300 for each violation. A member violates the law by knowingly attending a meeting held in violation of the law without having attempted to prevent the violation.

Enforcement Any person can complain to the district attorney of the county where the violation occurred. If the district attorney fails to take enforcement action within 20 days after receiving a verified complaint, the complaining person may begin a court action.

Enforcement is through the courts. When a court issues a writ of mandamus it orders the public official or body to perform a specified duty. The attorney general, district attorney or complaining person may seek a writ of mandamus, an injunction, or other relief in addition to the fine mentioned under Penalties.

A court may void any actions taken at a meeting held in violation of the law.

OPEN RECORDS

Definitions

Authority means a public or semi-public body holding records. It can be a governmental body, court, nonprofit corporation providing public health or safety services and funded more than 50% by county or municipal funds, the assembly or senate, or an elected official.

Record means the material created and kept by the authority. It can be handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (audio, video, or computer), or computer printouts. It does not mean: material where access is limited by copyright, patent or bequest; published materials available for sale; personal working papers; personal property; or published materials available for inspection at a public library.

Requester means any person asking to inspect or copy a record.

Legal custodian means the person in charge of the records. Elected officials are the legal custodians of their records. The chairperson of a committee of elected officials is the legal custodian. All other authorities must designate one or more employees as legal custodians. Most municipalities designate their clerks.

Descriptions

Procedure Each authority must publicly post a notice giving the times, places, and methods for the public to inspect and copy records.

--The time is office hours if there are regular office hours where the records are kept.

--If there are no regular office hours, records must be accessible at least 2 consecutive hours per week or on 48 hours notice. If notice is required to inspect records, this requirement must be posted.

Requests to inspect or copy records Anyone can inspect a record and make or receive a copy of the record. The person does not need to identify himself or herself or state the purpose of the request. The requester may be asked to show iden-

tification if the record is kept at a private home, or security reasons or federal law require it.

A request to inspect or copy a record may be oral or written; it must describe the record or information requested, with a reasonable limitation on subject matter or length of time covered.

Denial of requests Denials of oral requests may be oral--a written statement of the reasons may be demanded within 5 days of an oral denial. Denials of written requests must be in writing. All written denials must inform the requester of his/her right to seek a writ of mandamus to release the record. A request must be in writing before action to enforce it can be started.

Copying records A requester may personally copy or abstract a record or request that a copy be made. If a copy is requested, the form of the record will determine the type of copy: for written records, written copies; for audio tapes, an audio tape or a transcript; for video tapes, a video tape. Records which don't permit copying may be photographed.

A copying fee may be charged. The fee must not exceed actual, necessary, and direct cost of reproduction. A fee can be charged for locating a record if the cost is \$50 or more; a fee can be charged for mailing, shipping, photographing, and photographic processing. Prepayment of fees over \$5 may be required. The authority may waive or lower fees in the public interest.

Destruction of records A record cannot be destroyed until an inspection or copying request is granted, or at least 60 days have passed after a request was denied. If a legal action has been started, a record can't be destroyed until after the court decision has been issued and followed.

Exemptions Some records are not subject to the open records requirements:

--records specifically exempted by state or federal law

--records authorized to be exempted by state law

--law enforcement records required to be withheld by federal law, or as a condition for participation in a program

--computer programs (computer input and output material are not exempt)

--trade secrets

--library circulation records

Enforcement When access to a record is withheld or delayed after a written request, the requester may seek a writ of mandamus, asking the court to order release of the record. The requester may personally file with the court or may, in writing, request the attorney general or the district attorney to file.

Penalties If the court decides in favor of the requester, it awards attorney fees, damages of at least \$100, and other actual costs. If the court finds denial or delay was arbitrary and capricious, it may award punitive damages. If the court finds a fee was excessive, it may award punitive damages.

In actions brought by the district attorney or attorney general, forfeitures of up to \$1000 may be levied against any authority found to be arbitrarily and capriciously denying or delaying a response to a request, or charging excessive fees.

This material is based on Chapter 19 of the Wisconsin Statutes. Questions on specific interpretations of the laws should be referred to the Attorney General's office.

For the complete text of the open meeting law, see the LWVWI publication, Open Meetings.

The League of Women Voters is a nonpartisan organization working to promote political responsibility through informed and active participation of citizens in government. League membership is open to all citizens of voting age. Non-citizens may become associate members. You are invited to attend League meetings in any of the communities in which there is a local League.

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