# Table of Contents

## PART I  PUBLIC RECORDS LAW

### CHAPTER 1  OVERVIEW OF WISCONSIN’S PUBLIC RECORDS LAW

I. Scope [§ 1.1]

II. History of the Public Records Law [§ 1.2]
   A. Early Perceptions [§ 1.3]
   B. Wisconsin Public Records Laws [§ 1.4]
      1. History [§ 1.5]
      2. Statutory Presumption of Access [§ 1.6]

III. 2003 Amendment to the Public Records Law [§ 1.7]

IV. Definitions [§ 1.8]
   A. Authority [§ 1.9]
   B. Employee [§ 1.10]
   C. Local Public Office and State Public Office [§ 1.11]
      1. Local Public Office [§ 1.12]
      2. State Public Office [§ 1.13]
   D. Record [§ 1.14]
      1. Statutory Definition [§ 1.15]
      2. Email [§ 1.16]
      3. Copies [§ 1.17]
      4. Drafts and Notes [§ 1.18]
      5. Published Materials [§ 1.19]
      6. Copyrighted Material [§ 1.20]
      7. Social Media [§ 1.21]
   E. Record Subject [§ 1.22]
   F. Requester [§ 1.23]
   G. Legal Custodians [§ 1.24]

V. Procedural Information [§ 1.25]
   A. Notice Requirements [§ 1.26]
   B. Time Computation [§ 1.27]
   C. Limited Notice Requirements to Record Subjects [§ 1.28]
CHAPTER 2
MAKING AND RESPONDING TO A PUBLIC RECORDS REQUEST

I. Scope [§ 2.1]

II. The Request [§ 2.2]
   A. In General [§ 2.3]
   B. Definition of Requester [§ 2.4]
   C. Form of the Request [§ 2.5]
   D. Identity of the Requester [§ 2.6]

III. Responding to a Request [§ 2.7]
   A. Time to Respond [§ 2.8]
   B. “Except as Otherwise Provided by Law”: Statutory Exceptions [§ 2.9]
      1. Exceptions Listed in the Public Records Law [§ 2.10]
         a. In General [§ 2.11]
         b. Application of Other Laws [§ 2.12]
         c. Law Enforcement Records [§ 2.13]
         d. Contractors’ Records [§ 2.14]
         e. Computer Programs and Data [§ 2.15]
         f. Trade Secrets [§ 2.16]
         g. Separation of Information [§ 2.17]
         h. Identities of Applicants for Public Positions [§ 2.18]
         i. Identities of Law Enforcement Informants [§ 2.19]
         j. Plans or Specifications for State Buildings [§ 2.20]
         k. Employee Personnel Records [§ 2.21]
         l. Records of an Individual Holding a Local or State Public Office [§ 2.22]
         m. Information Relating to Prevailing Wage Employees [§ 2.23]
         n. Financial Identifying Information [§ 2.24]
      2. Other Statutory Exceptions [§ 2.25]
         a. In General [§ 2.26]
         b. The USA PATRIOT Act [§ 2.27]
   C. Common-Law Limitations on Access [§ 2.28]
      1. In General [§ 2.29]
      2. Prosecutor’s Files [§ 2.30]
      3. Social Security Numbers [§ 2.31]
      4. Purely Personal Email Records [§ 2.32]
   D. The Balancing Test [§ 2.33]
   E. Other Limitations [§ 2.34]
   F. Pledge of Confidentiality [§ 2.35]
   G. Safety Reasons [§ 2.36]
   H. Ongoing Criminal Investigations [§ 2.37]
   I. Identity Theft [§ 2.38]
   J. Victim’s Rights [§ 2.39]
   K. Police and Prosecution Strategies and Techniques [§ 2.40]
   L. Voter Intimidation [§ 2.41]

IV. Practical Application [§ 2.42]
   A. Basis for Denial [§ 2.43]
   B. Processing a Request [§ 2.44]
C. Notice to the Record Subject [§ 2.45]  
D. Responding to a Notice [§ 2.46]  
E. The Court’s Response [§ 2.47]  

V. Summary of Notification Requirements [§ 2.48]  
A. Employee Notification [§ 2.49]  
B. Public Official Notification [§ 2.50]  
C. Failure to Comply [§ 2.51]  

VI. Format of the Record [§ 2.52]  
A. Records in Formats That Permit Photocopying [§ 2.53]  
B. Audio Recordings [§ 2.54]  
C. Videotapes [§ 2.55]  
D. Computer Tapes [§ 2.56]  
E. Unusual Format [§ 2.57]  

VII. The Denial [§ 2.58]  

VIII. Personally Identifiable Information [§ 2.59]  

IX. Record Retention [§ 2.60]  

CHAPTER 3  
PRIVILEGES  

I. Scope [§ 3.1]  

II. Privileges Applicable to Attorney-Client Records [§ 3.2]  
A. Attorney-Client Privilege and the Public Records Law [§ 3.3]  
   1. In General [§ 3.4]  
   2. The Attorney-Client Privilege [§ 3.5]  
   3. Definitions [§ 3.6]  
   4. Communications Covered [§ 3.7]  
   5. Exceptions [§ 3.8]  
   6. Attorney-Client Privilege and Governmental Clients [§ 3.9]  
   7. Attorney Work Product [§ 3.10]  
B. SCR 20:1.6—Rule of Confidentiality [§ 3.11]  
   1. Rule of Confidentiality and Attorney-Client Privilege Compared [§ 3.12]  
   2. Rule of Confidentiality and Government Attorneys [§ 3.13]  

III. Other Privileges [§ 3.14]  
A. Identity of an Informant [§ 3.15]  
B. Other Evidentiary Privileges [§ 3.16]  
C. Deliberative-Process Privileges [§ 3.17]
CHAPTER 4
ACCESS TO PERSONNEL RECORDS
IN THE CUSTODY OF A PUBLIC OFFICIAL

I. Scope [§ 4.1]

II. Record Requests by the Employee [§ 4.2]
   A. Inspection of Personnel Documents Under Wis. Stat. § 103.13 [§ 4.3]
   B. Personnel Information Practices [§ 4.4]

III. Record Requests by the Public [§ 4.5]
   A. Employment Applications [§ 4.6]
   B. Drivers’ Information [§ 4.7]
   C. Access to Personnel Records [§ 4.8]
      1. Balancing Test [§ 4.9]
      2. Law Enforcement Officers [§ 4.10]
         a. In General [§ 4.11]
         b. Weapons-Discharge Reports [§ 4.12]
         c. Disciplinary Records [§ 4.13]
         d. Records of Undercover Investigations [§ 4.14]
         e. Prison Employees’ Records [§ 4.15]
      3. Records Implicating Privacy and Reputational Interests [§ 4.16]
         a. In General [§ 4.17]
         b. Open Meetings Law Exemptions [§ 4.18]
         c. The Woznicki Decision [§ 4.19]
         d. Balancing Privacy and Reputational Interests [§ 4.20]
         e. Public Officials [§ 4.21]

CHAPTER 5
LAW ENFORCEMENT RECORDS

I. Scope [§ 5.1]

II. Handling Requests for Law Enforcement Records [§ 5.2]
   A. In General [§ 5.3]
   B. Processing the Request [§ 5.4]
   C. Honoring the Request [§ 5.5]
   D. Denying the Request [§ 5.6]

III. Subpoenas for Law Enforcement Personnel Records [§ 5.7]

IV. Other Records Created by Law Enforcement Personnel [§ 5.8]
   A. Criminal Investigative Reports [§ 5.9]
   B. Log-In Records and Booking Records [§ 5.10]
   C. Memo Books [§ 5.11]
   D. Internal Investigations [§ 5.12]
   E. Privacy and Reputational Interests [§ 5.13]
   F. Ongoing Investigations [§ 5.14]
   G. Sex Offender Reports [§ 5.15]
   H. Traffic Reports [§ 5.16]
TABLE OF CONTENTS

I. Officer Safety [§ 5.17]
J. Drivers’ Records [§ 5.18]
   1. Driver’s Privacy Protection Act [§ 5.19]
   2. Law Enforcement Concerns About the DPPA [§ 5.20]
   3. Interpretations of the DPPA [§ 5.21]
K. Citizen Complaints [§ 5.22]
L. Juvenile Records [§ 5.23]
   1. Prohibition to Disclosure [§ 5.24]
   2. Exceptions [§ 5.25]
   3. Discretionary Disclosure [§ 5.26]
   4. Remedy if Request Denied [§ 5.27]
   5. Disclosure of Juvenile Records Held by Courts [§ 5.28]
   6. Juvenile Motor Vehicle Violations Records [§ 5.29]
   7. Adjudication of Sexually Violent Persons [§ 5.30]
   8. Other Statutory Exceptions [§ 5.31]
M. Citizen’s Safety Concerns [§ 5.32]
N. Identity Theft [§ 5.33]
O. Victim’s Rights [§ 5.34]
P. Immigration Detainer Forms [§ 5.35]
Q. Other Records [§ 5.36]

CHAPTER 6
PUPIL AND JUVENILE RECORDS
IN THE POSSESSION OF A SCHOOL DISTRICT

I. Scope [§ 6.1]

II. Overview [§ 6.2]
   A. Federal Law [§ 6.3]
   B. State Law [§ 6.4]
   C. Inconsistencies [§ 6.5]
   D. General Rule [§ 6.6]
      1. State Law [§ 6.7]
      2. Federal Law [§ 6.8]

III. Scope of the Public Records Law [§ 6.9]
   A. In General [§ 6.10]
   B. Exemption from Disclosure [§ 6.11]
   C. Justification for Denial [§ 6.12]
   D. Redaction Requirement [§ 6.13]
   E. Parental Information [§ 6.14]

IV. Disclosure of Pupil Records [§ 6.15]
   A. In General [§ 6.16]
   B. Disclosure to Noncustodial Parents [§ 6.17]
   C. Disclosure to Third Parties [§ 6.18]
      1. In General [§ 6.19]
      2. Disclosure by Written Consent [§ 6.20]
      3. Disclosure to School District Personnel and Designated Law Enforcement Officers [§ 6.21]
### Table of Contents

4. Disclosure to State and Local Health Officials [§ 6.22]
5. Disclosure of Names of Pupils Who Have Withdrawn [§ 6.23]
6. Disclosure to Public Officials [§ 6.24]

V. Pupils’ School, Police, and Court Records [§ 6.25]
   A. Statutory Changes [§ 6.26]
   B. Law Enforcement Records [§ 6.27]
      1. Statutory Provisions [§ 6.28]
      2. School-District Use of Law Enforcement Records [§ 6.29]
   C. Court Proceedings and Records [§ 6.30]
   D. Pupil Records Requested by Courts or Law Enforcement Agencies [§ 6.31]
      1. Disclosure to the Court [§ 6.32]
      2. Disclosure to Law Enforcement Agencies [§ 6.33]

VI. Directory Data [§ 6.34]

VII. Maintenance of Pupil Records [§ 6.35]

VIII. Transfer of Records to Another School or School District [§ 6.36]

IX. Use for Suspension or Expulsion [§ 6.37]

X. Amendment of Records [§ 6.38]

XI. Records of Students with Disabilities [§ 6.39]

XII. Penalties for Violation of State and Federal Laws [§ 6.40]
   A. State Law [§ 6.41]
   B. Federal Law [§ 6.42]

XIII. School Personnel Records [§ 6.43]

CHAPTER 7
CONTRACTORS' RECORDS

I. Scope [§ 7.1]

II. Authority [§ 7.2]

III. Coverage [§ 7.3]
   A. Entities Covered [§ 7.4]
   B. Documents Covered [§ 7.5]

IV. Procedure for Disclosure [§ 7.6]

V. Exceptions [§ 7.7]
   A. Confidential Information [§ 7.8]
   B. Trade Secrets [§ 7.9]
   C. Copyrights [§ 7.10]
CHAPTER 8
FEES A RECORDS CUSTODIAN MAY CHARGE

I. Scope [§ 8.1]

II. Fees That May Be Imposed [§ 8.2]
   A. Authority [§ 8.3]
   B. Location Fees [§ 8.4]
   C. Reproduction Fees [§ 8.5]
      1. Reproduction Costs [§ 8.6]
      2. Labor Costs [§ 8.7]
      3. Printing Costs [§ 8.8]
   D. Shipping Fees [§ 8.9]
   E. Transcription Fees [§ 8.10]
   F. Redaction Fees [§ 8.11]

III. Fees That May Not Be Imposed [§ 8.12]
   A. Certification Fees [§ 8.13]
   B. Sales Tax [§ 8.14]

IV. Prepayment [§ 8.15]

V. Charging for Electronic Records [§ 8.16]
   A. In General [§ 8.17]
   B. Accident Reports [§ 8.18]

CHAPTER 9
ENFORCEMENT

I. Scope [§ 9.1]

II. Authority [§ 9.2]

III. Mandamus [§ 9.3]

IV. Claim Preclusion [§ 9.4]

V. Damages, Fees, and Costs [§ 9.5]
   A. Damages [§ 9.6]
   B. Costs and Attorney Fees [§ 9.7]

VI. Punitive Damages [§ 9.8]

VII. Forfeitures [§ 9.9]
CHAPTER 10
ISSUES INVOLVING ELECTRONIC PUBLIC RECORDS

I. Scope [§ 10.1]

II. Audiotapes and Videotapes and Transmissions [§ 10.2]
   A. Audiotapes and Videotapes [§ 10.3]
   B. Audio and Video Transmissions [§ 10.4]

III. Computer Records [§ 10.5]
   A. Definitions [§ 10.6]
   B. Specificity of the Request [§ 10.7]
   C. Responding to the Request [§ 10.8]
   D. Inspecting Computer Records [§ 10.9]
   E. Metadata [§ 10.10]
   F. Copying Computer Records [§ 10.11]
   G. Fees for Searches and Reproduction of Computer Records [§ 10.12]

IV. Miscellaneous Issues [§ 10.13]
   A. Form of the Request [§ 10.14]
   B. Effect of Desktop Publishing and Copyright [§ 10.15]
   C. Preservation or Destruction of Electronic Public Records [§ 10.16]
      1. In General [§ 10.17]
      2. Email as a Public Record [§ 10.18]
      3. Expectation of Privacy in Electronic Records [§ 10.19]
      4. Electronic Record Retention [§ 10.20]
   D. Electronic Signatures [§ 10.21]
   E. Electronic Records Management [§ 10.22]
      1. In General [§ 10.24]
      2. Key Provisions [§ 10.25]
      3. Ambiguities [§ 10.26]
      4. Application [§ 10.27]

CHAPTER 11
FREEDOM OF INFORMATION ACT

I. Scope of Chapter [§ 11.1]

II. Duties of Federal Agencies Under FOIA [§ 11.2]

III. Timing of Response Under FOIA [§ 11.3]

IV. Adequacy of the Search [§ 11.4]

V. FOIA Fees [§ 11.5]

VI. FOIA Exemptions [§ 11.6]
   A. In General [§ 11.7]
B. Exemption 1: Pursuant to Executive Order  [§ 11.8]
C. Exemption 2: Internal Personnel Rules  [§ 11.9]
D. Exemption 3: Specifically Exempted by Statute  [§ 11.10]
E. Exemption 4: Commercial or Financial Information  [§ 11.11]
F. Exemption 5: Civil Discovery Privileges  [§ 11.12]
G. Exemption 6: Invasion of Personal Privacy  [§ 11.13]
H. Exemption 7: Law Enforcement Records  [§ 11.14]
   1. In General  [§ 11.15]
   2. Exemption 7(A): Interference With Law Enforcement Proceedings  [§ 11.16]
   3. Exemption 7(B): Deprivation of Fair Trial  [§ 11.17]
   4. Exemption 7(C): Unwarranted Invasion of Personal Privacy  [§ 11.18]
   5. Exemption 7(D): Confidential Sources  [§ 11.19]
   7. Exemption 7(F): Endanger Life or Safety  [§ 11.21]
I. Exemption 8: Reports Relating to Financial Institutions  [§ 11.22]
J. Exemption 9: Geological and Geophysical Information  [§ 11.23]
K. Segregation of Undisclosable Information  [§ 11.24]

VII. FOIA Complaint Procedure  [§ 11.25]

PART II  OPEN MEETINGS LAW

CHAPTER 12
COVERAGE OF THE OPEN MEETINGS LAW

I. Scope  [§ 12.1]

II. Purpose and Policy of the Open Meetings Law  [§ 12.2]

III. Entities Covered  [§ 12.3]
   A. State or Local Agencies, Boards, and Commissions  [§ 12.4]
      1. In General  [§ 12.5]
      2. Governmental Bodies Created by Rule or Order  [§ 12.6]
   B. Governmental or Quasi-Governmental Corporations  [§ 12.7]
   C. Other Governmental Bodies  [§ 12.8]
   D. Subunits  [§ 12.9]
   E. State Legislature  [§ 12.10]
   F. Elections and Ethics Commissions  [§ 12.11]
   G. Contract  [§ 12.12]

IV. Entities Not Covered  [§ 12.13]
   A. Bradley Center  [§ 12.14]
   B. Entities Meeting for Collective Bargaining  [§ 12.15]
   C. Single Member  [§ 12.16]
   D. Entities Created by the Wisconsin Supreme Court  [§ 12.17]
CHAPTER 13
DEFINITION OF MEETING

I. Scope [§ 13.1]

II. Definition of a Meeting [§ 13.2]

III. Triggering Application of the Law [§ 13.3]
   A. In General [§ 13.4]
   B. The Purpose Test [§ 13.5]
   C. The Numbers Test [§ 13.6]
      1. In General [§ 13.7]
      2. Negative Quorum [§ 13.8]

IV. Application of the Open Meetings Law [§ 13.9]
   A. Burden of Proof [§ 13.10]
   B. Statute of Limitation [§ 13.11]
   C. Complaints [§ 13.12]

V. Special Situations [§ 13.13]
   A. Walking Quorums [§ 13.14]
   B. Telephone Conference Calls [§ 13.15]
   C. Multiple Meetings [§ 13.16]
   D. Email [§ 13.17]
   E. Instant Messaging [§ 13.18]
   F. Social Media [§ 13.19]

VI. Exceptions [§ 13.20]

CHAPTER 14
ACCESSIBILITY AND OPENNESS

I. Scope [§ 14.1]

II. Reasonable Public Access [§ 14.2]

III. Accessible to Persons with Functional Limitations [§ 14.3]

CHAPTER 15
NOTICE

I. Scope [§ 15.1]

II. To Whom and How Notice Must Be Given [§ 15.2]
   A. In General [§ 15.3]
   B. To the Public [§ 15.4]
   C. To the News Media [§ 15.5]
III. Notice Contents [§ 15.6]
   A. In General [§ 15.7]
   B. Miscellaneous Business Clauses [§ 15.8]
   C. Mistake [§ 15.9]
   D. Exception to Notice Requirements [§ 15.10]

IV. Notice of Closed Session [§ 15.11]

V. Reconvening in Open Session After Closed Session [§ 15.12]

VI. Timing of Notice [§ 15.13]

VII. Separate Notice for Each Meeting [§ 15.14]

VIII. Notice of Subunit Meeting [§ 15.15]

IX. Public Comment [§ 15.16]

X. Notice of Closed Session of the Ethics Commission or the Elections Commission [§ 15.17]

XI. Notice of Collective Bargaining Negotiations [§ 15.18]

XII. Application to Senate and Assembly Meetings [§ 15.19]

CHAPTER 16
VOTING AND RECORD KEEPING

I. Scope [§ 16.1]

II. Votes [§ 16.2]
   A. In General [§ 16.3]
   B. Manner of Voting [§ 16.4]
   C. Voting in Closed Session [§ 16.5]
   D. Ballots [§ 16.6]
      1. Secret Ballots [§ 16.7]
      2. Paper Ballots [§ 16.8]

III. Records Required [§ 16.9]
   A. Minutes [§ 16.10]
   B. Motions and Votes [§ 16.11]
   C. Recording, Filming, or Photographing [§ 16.12]

CHAPTER 17
CLOSED MEETINGS

I. Scope [§ 17.1]

II. Closed Sessions in General [§ 17.2]
III. Procedure for Convening in Closed Session  [§ 17.3]

IV. Permitted Purposes for Convening in Closed Session  [§ 17.4]
   A. Wis. Stat. § 19.85(1)(a): Deliberations on Judicial or Quasi-Judicial Cases  [§ 17.5]
      1. In General  [§ 17.6]
      2. Board of Review Proceedings  [§ 17.7]
   C. Wis. Stat. § 19.85(1)(c): Considerations About Public Employees  [§ 17.9]
      1. In General  [§ 17.10]
      2. Elected Officials  [§ 17.11]
   F. Wis. Stat. § 19.85(1)(ee) and (eg): Unemployment Insurance and Worker’s Compensation  [§ 17.14]
   H. Wis. Stat. § 19.85(1)(f): Personal Information  [§ 17.16]
   J. Wis. Stat. § 19.85(1)(h): Request for Ethics Advice  [§ 17.18]

V. Attendance and Conduct at Closed Session  [§ 17.19]
   A. Attendance  [§ 17.20]
   B. Voting in Closed Session  [§ 17.21]
   C. Reconvening in Open Session  [§ 17.22]

VI. Burden of Proof  [§ 17.23]

CHAPTER 18
ENFORCEMENT AND PENALTIES

I. Scope  [§ 18.1]

II. Acts Violating the Statute  [§ 18.2]
   A. In General  [§ 18.3]
   B. Definition of Knowingly  [§ 18.4]

III. Enforcement  [§ 18.5]
   A. Discretion in Enforcement  [§ 18.6]
   B. Parties  [§ 18.7]
      1. Prosecutors  [§ 18.8]
      2. Notice  [§ 18.9]
      3. Defendants  [§ 18.10]
   C. Definitions  [§ 18.11]
      1. Meaning of Person  [§ 18.12]
      2. Meaning of Verified Complaint  [§ 18.13]
      3. Statute of Limitation  [§ 18.14]
   D. Burden of Proof  [§ 18.15]
IV. **Penalties and Other Relief** [§ 18.16]
   A. **Statutory Penalty** [§ 18.17]
      1. **In General** [§ 18.18]
      2. **Nature of Penalty** [§ 18.19]
   B. **Supplementary Relief** [§ 18.20]
      1. **In General** [§ 18.21]
      2. **Voidability of Actions** [§ 18.22]
      3. **Training** [§ 18.23]

V. **Defenses** [§ 18.24]
   A. **Statutory Defenses** [§ 18.25]
   B. **Common-Law Defenses** [§ 18.26]

VI. **Award of Attorney Fees** [§ 18.27]

VII. **Representation** [§ 18.28]
   A. **Reimbursement for Defense** [§ 18.29]
   B. **Representation by Governmental Attorney** [§ 18.30]

VIII. **Interpreting the Open Meetings Law** [§ 18.31]
   A. **Construction** [§ 18.32]
   B. **Interpretations of Law** [§ 18.33]

**APPENDICES**
   A **Selected Public Records and Open Meetings Rules and Statutes**
      • Text of Wisconsin Statutes Chapter 19 (annotated)
      • Text of Wisconsin Statutes Section 103.13 (annotated)
      • Text of Wisconsin Statutes Sections 118.125–128 (annotated)
      • Text of Wisconsin Statutes Chapter 137 (annotated)
      • Text of Wisconsin Administrative Code Chapter Adm 12
      • Text of 5 U.S.C. § 552
      • Text of 20 U.S.C. § 1232g
   B **Sample Notices Concerning Record Requests**
   C **Key Cases**
   D **Statutory Exceptions**
   E **City of Baraboo Joint Review Board Meeting: Public Notice**
   F **Verified Open Meetings Law Complaint**
   G **Article: Rediscovering the Lost Art of Verbal Conversation and Decreasing Your Legal Liability**

**INDEX**

**TABLE OF CASES**