Records of Public Officials

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It's a Way of Life

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Public Policy and Purpose

"[I]t 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."

Wis. Stat. § 19.31.

Providing citizens with information on the affairs of government is:

- [A]n essential function of a representative government

- an integral part of the routine duties of officers and employees

- a basic tenet of our democratic system

What is a "Record"?

- Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved

- Created or kept in connection with official purpose or function

- Not everything a public official or employee creates is a public record

"Record" includes:

- Handwritten, typed or printed documents;
- Photographs, films and tape recordings;
- Maps and charts;
- Electronic data, records and communications.

"Record" does not include:

- Requests for "information"
- Drafts, notes, preliminary documents and similar materials prepared for the originator's personal use
- Published material available for sale or at the library
- Purely personal property with no relation to the office
- Material with access limited due to copyright, patent or bequest

Elected Officials

- An elected official is legal custodian of his or her records
- No elected official is responsible for the records of any other elected official

The Request

- Requests do not have to be in writing
- Requester generally does not have to identify himself or herself
- Requester does not need to state the purpose
- Must be reasonably specific
- "Magic words" are not required
- Citations to FOIA are treated as though made under state public records law

The Response

- The custodian MUST respond to a public records request
- Response must be given "as soon as practicable and without delay."
- If the request is in writing, a denial or partial denial of access also must be in writing
- Reasons for denial must be specific and sufficient

Exemptions from Disclosure

- Statutory exemptions
  - Sec. 19.36, Wis. Stats.
  - Trade Secrets
  - Portions of personnel records – Personally Identifiable Information
  - Applicants for public positions (except "Final Candidates")
- Balancing Test
  - Generally, there are no blanket exemptions from release
  - Balance the strong public interest in disclosure of the record against the public interest favoring nondisclosure

Records regarding Employees and Officials

- *Woznicki v. Erickson*, 202 Wis. 2d 178, 189-94, 549 N.W.2d 699 (1996)
- Employee Records - Sec. 19.356, Stats.
  - Notice to employee before records release
  - Certain employee records regarding discipline or impacting privacy interests
  - Notice in writing and opportunity to respond or initiate court action
  - Statutory waiting periods before records can be released
- Public Officials given opportunity to supplement records before release

Electronic Records

- Different from paper records

- Maintain in electronic format

- Electronic Mail – all "@wauwatosa.net" messages are archived by the City of Wauwatosa

- Text messaging – No viable way to archive appropriately, therefore should not be used for official business

Enforcement

- Mandamus Action
- District Attorney (Milwaukee County Corporation Counsel)
- Attorney General

Penalties

- Attorneys' fees, damages of not less than $100, and other actual costs
- Civil forfeiture of not more than $1,000 if a legal custodian arbitrarily or capriciously denies or delays response
- Criminal Penalties for:
  - Destruction, damage, removal or concealment of public records with intent to injure or defraud.
  - Alteration or falsification of public records.

Key Takeaways

- Public Records must be preserved

- Requests for public records may be oral or written, no formal process or form required

- All requests must be responded to

Questions?