



Trustee 301— Wisconsin Open Meetings and Public Records Law

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Today's Topics

- Open Meetings Law
 - Who is governed by this law
 - What is a meeting
 - Noticing meetings
 - Closed Sessions
 - Minutes
- Public Records Law
 - What is a record
 - Release of public records and reasons for denying access
 - Library confidentiality
 - Records retention

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Disclaimer

- I'm not an attorney
- I don't play one on TV either
- I'm focusing on the most common issues faced by library boards
- In many cases, the Devil is in the details

Open Government

“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.”

Sec. 19.81(1), Wis. Stats.

“This subchapter shall be liberally construed to achieve the purposes set forth in this section. . .”

Sec. 19.81(3), Wis. Stats.

Open Meetings



The Basics

All meetings of all governmental bodies:

- Must be preceded by public notice
- Must be held in a reasonably accessible place
- Must be open to the public except where statutes specifically authorize a closed session
- Minutes must be kept

What's a Governmental Body

- The Library Board
- Any committee established by the library board, regardless of the composition of the committee

What's (Probably) Not

- Staff committees established by the library director
- Friends of the Library
- Individual trustees tasked with specific duties by the library board

What's a Meeting?

“ 'Meeting' means the convening of members of a governmental body for the purpose of exercising the responsibilities, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter. . . .”

Sec. 19.82(1), W is. Stats

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Key Points

- Convening of members
 - Physical or virtual
- Enough to determine course of action (usually “one half or more” but could be fewer)
- “exercising the responsibilities, authority, power or duties ”
 - Formal or informal discussion or action
 - Information gathering
- “Social” or “chance” gatherings and conferences not intended to avoid the law are excluded

Out-Of-Meeting Communication

- How much does a particular communication resemble a face-to-face exchange?
 - Email
 - “Walking quorums”

Meeting Notice

- Every meeting of a governmental body shall be preceded by public notice. . . , and shall be held in open session. At any meeting of a governmental body, all discussion and all action of any kind, formal or informal, shall be initiated, deliberated upon, and acted upon only in open session except as provided in s. 19.85.

- Sec. 19.83(1), W is. Stats.

Public Notice

- What does the notice include?
 - Time
 - Date
 - Place
 - Subject matter to be discussed

Meeting Notice

- Stay away from generic “Old Business” or “New Business” agenda items, unless individual items are specifically listed.
- Ask yourself:
 - “Would a person interested in a particular subject or issue be aware from reading the meeting notice that the subject or issue would be discussed?”

Meeting Notice

- Who gets the notice?

1. Members of the public (by posting wherever public notices are generally posted)
2. Official paper, if one has been designated, or to another news medium likely to give notice in the area
3. News media which have requested notice

Meeting Notice

- When must notice be sent?
 - Notice must be received at least 24 hours before the meeting
 - Two hour minimum for “good cause” if more advanced notice is “impossible or impractical.”

Additions to the Agenda

- ◉ Not recommended “Other Business”
- ◉ In case of emergency additions
- ◉ In response to public comments

Open Session Requirements

- Accessible room
- Discussion limited to agenda items
- Reasonable accommodation made for recording by public, as long as it doesn't interfere with the meeting
- Citizen participation permitted
- Meeting Minutes
 - Members & others present, motions, roll-call votes, announcements of any closed session business

Open Meeting Minutes

- Available to the public
- At a minimum:
 - Board members present
 - All motions
 - Results of any votes

Virtual Meetings

- Individuals may attend via phone or online connection
- A meeting may be entirely via phone or online
- All provisions of Open Meetings law must be followed
- Provision must be made for members of the public to “attend”



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Closed Sessions

- ◉ Permitted, but never required
- ◉ Specific, limited reasons
- ◉ Voting discouraged
- ◉ Discussion is limited to the subject given in the closed session notice
- ◉ May discuss two topics in closed session if properly noticed
- ◉ Meeting Minutes

Closed Sessions

- Meeting notice must give the reason for the meeting, quoting the Statute
- If you intend to resume open session after the closed session the notice must state this
- You may not reconvene within 12 hours of a closed session unless notice for the second meeting is posted at the same time as the closed session's

Closed Session Procedures

1. Meeting notice includes planned closed session, quoting statutory language
2. Convene in open session
3. Announcement of closed session, quoting statutory language
4. Motion, second, and roll call vote to enter closed session
5. Declare closed session

Closed Session Procedures

6. Discussion
7. Possible vote, though this is discouraged
8. Motion, second, and roll call vote either to adjourn or to resume open session
9. Resume open session
10. Vote on issues discussed in closed session
11. Continue meeting or adjourn

Example Close Session Wording

- CLOSED SESSION Pursuant to Section 19.85(1)(c) of the Wisconsin State Statutes in order to conduct an evaluation of the Director and consider compensation for the Director's position.
- CLOSED SESSION Pursuant to Section 19.85(1)(c) of the Wisconsin State Statutes in order to discuss matters pertaining to the employment, promotion, compensation or performance evaluation data.
- CLOSED SESSION Pursuant to Section 19.85(1)(e) of the Wisconsin State Statutes in order to discuss matters pertaining to the acquisition of property which for competitive or bargaining reasons requires a closed session.

Legal Reasons for Closed Sessions: Disciplinary Action

- 19.85(1)(b): “Considering dismissal, demotion, licensing or discipline of any public employee ... or the investigation of charges against such person, ..., and the taking of formal action on any such matter”
- *The person being discussed may request that any evidentiary hearing and final action be in open session.*

Legal Reasons for Closed Sessions: Employment

- 19.85(1)(c): “considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.”
 - *Not allowed for general personnel discussions; only when discussing particular person*
 - *Public employees*
 - *Jurisdiction or responsibility*

Legal Reasons for Closed Sessions: Hiring a Director

- Open session required
 - Job description & duties
 - Education, experience & other qualities desired
 - Pay scales or ranges
- Closed session permitted
 - Reviewing resumes
 - Interviewing candidates
 - Discussing candidates and choosing successful candidate
 - Specific salary to be paid

Legal Reasons for Closed Sessions: Effect on Reputation

- Sec. 19.85(1)(f): “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 of any person referred to in such histories or data, or involved in such problems or investigations.”

Legal Reasons for Closed Sessions: Purchasing, Investment, & Competitive or Bargaining Interests

- Sec. 19.85(1)(e): “deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified business, whenever competitive or bargaining reasons require a closed session.”

Legal Reasons for Closed Sessions: Conferring With Legal Counsel

- Sec. 19.85(1)(g): “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.”

Who may attend a closed session?

- All members of the body
- Members of parent body, if meeting is of a subunit
 - The library board is a “statutory body” and is not considered a subunit of the municipal board
 - But a member of the municipal board who has been appointed trustee may not be excluded
- Anyone whose presence is necessary to conduct the closed session business

Closed Session Minutes

- Motions, roll-call votes
- Minutes remain closed only as long as necessary; they become public when underlying reason for closed session is past.



Open Meetings Violations

- “Knowing” attendance at meeting held in violation of open meetings law
 - “Knowing” means positive knowledge of illegality or awareness (or conscious avoidance of awareness) that the probability of illegality is high



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Open Meetings Violations

- Other violations of open meetings law, even if not “knowing;”
 - Insufficient meeting notices
 - Improper closed session procedures

Open Meetings Violations

- Complaint can be brought by District Attorney or member of the public
- Civil forfeiture: \$25 - \$300

How to Protect Yourself

- Know the Law
- You are not liable for attendance at an unlawful meeting if you made or voted in favor of a motion to prevent the violation
- Liability can be avoided for members who openly and in good faith seek and rely on the advice of the body's legal counsel

How to Protect Yourself

- Vote against action that would lead to a violation
- Leave the meeting
- Make sure the minutes record your action

Questions?



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Public Records



~~GRAMA~~ Grandma REQUEST

Presumptions

- The public records law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”

Sec. 19.31

What Does the Law Require?

- Public records must be appropriately collected, filed, and retained
- Most records must be made available to persons who request them.

What's a Record?

- “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 is being kept by an authority.”

Sec 19.32(2)

What's a Record?

- Correspondence
 - Paper, email, texts, and voicemail (probably)
- Financial records
- Statistical reports
- Personnel records
- Board documents

What's a Record?

- Library's web site and social media accounts
 - Including comments posted by the public
- Pictures taken by staff (or at the library's request) at library events or by security cameras
- Recordings of board meetings (possibly)
- The open records request itself

What's Not?

- ◉ Drafts, notes, and preliminary documents
- ◉ Purely personal property
- ◉ Library collection (books, etc.)
- ◉ Pictures taken at library events by members of the public
- ◉ Material with limited access rights, such as software, proprietary information, etc.
- ◉ Junk mail

Other Definitions

- Authority: The public agency or body creating records
- Custodian: The public official or employee charged with answering records requests
- Requester: The person asking for public records
- Responsive record: Any record matching the request

Sufficient Request

- Written request or form not required—but may be a good idea
- “Magic words” not required
- Reasonably describes the information or record requested
- Reasonably specific as to time and subject matter
- You should not have to guess what records the requester wants

Scope of Request

- A large number of responsive records—by itself—does not make a request too broad
- A request cannot so burden an authority that its normal functioning would be impaired
- A requester may have no way of knowing how many responsive records exist
- A requester may have no interest in many “technically” responsive records
- Keep purpose and objective of public records law in mind

Scope of Request

- Generally, only records that exist at the time of the request must be produced—you need not create new records
- Continuing requests are not contemplated by the public records law
- Public records law does not require answering questions

Response

- No specific time limits, depends on circumstances
- Response is required, “as soon as practicable and without delay”
- DOJ recommendation: 10 business days generally reasonable for response to simple, narrow requests
- May be prudent to send an acknowledgement if records are not immediately available
- Penalties for arbitrary and capricious delay
- Can provide in physical or electronic form

Records Custodian

- Library board choose a legal custodian to respond to public records request
- Custodian will be approved with a resolution by the board
- Notice should be posted in the library how when, where and how to request a record

Reasons for Denial

- Reasons for denial must be specific and sufficient
- Purpose is to give adequate notice of reasons for denial and ensure that custodian has exercised judgment
- Reviewing court usually limited to reasons stated in denial
- Availability of same records from other sources generally not a sufficient reason

Costs

- Actual, necessary, and direct costs only—unless otherwise specified by law
- You cannot make a profit
- You may require prepayment if total costs exceed \$5.00
- You may choose to provide records for free or reduced charge

Permissible Charges

- Copying and reproduction
- Locating records, if costs exceed \$50.00
- Mailing/shipping
- Others specified in Wis. Stat. § 19.35(3)
- Authorities may not charge for redaction costs
- Keep careful records in order to support and calculate requests for payment of costs
- Work with requester to limit costs

What Can be Withheld?

- Employees' personal information
 - social security number, bank account information
 - health and medical information
 - HIPPA (Health Insurance Portability and Accountability Act)
- Closed session minutes
 - Until the underlying reason for the closed session has passed

What Can be Withheld?

- Information relating to specific employees that is used for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

What Can be Withheld?

- Information related to a current investigation of possible employee criminal conduct or misconduct prior to the disposition of the investigation
- An “investigation” reaches its “disposition” when the employer has completed the investigation, and acts to impose discipline

Job Applicants or Candidates

- Each applicant who is seriously considered for appointment or whose name is certified for appointment, and whose name is submitted for final consideration...
- Includes all of the following:
 - When there are at least 5 applicants, each of the 5 applicants considered most qualified
 - When there are fewer than 5 applicants, each applicant
 - When an appointment is to be made from a group of more than 5 most qualified applicants, all applicants in the group

Section 19.36(7)

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Library Confidentiality

- Records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who borrows or uses the library's documents or other materials, resources, or services may not be disclosed

Sec. 43.30 (1m)

This Includes

- Records of library cardholders, including whether an individual has a card
- Computer use records
- Pictures taken by staff at library events, if individuals can be identified
- Security camera records

Use of Library “Resources or Services”

- Broad interpretation by Department of Justice
 - Meeting rooms
 - Parking lot and rest rooms

Exceptions to Library Confidentiality

- By court order
- To persons acting within the scope of their duties in the administration of the library or library system
- To persons authorized by the individual to inspect such records
- To custodial parents or guardians of children under the age of 16

Exceptions to Library Confidentiality

- Surveillance camera records requested by a law enforcement officer who is investigating criminal conduct alleged to have occurred at the library
- Surveillance camera records if a library requests the assistance of a law enforcement officer

Exceptions to Library Confidentiality

- Information must be released if needed to stop a crime in progress or prevent an imminent crime
- Library staff memories are not public records; staff can and should be forthcoming with their personal knowledge

Questions?



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What Does This Mean For Me?

- Library trustees are public officials.
- Documents that you create *in your official capacity* must be properly kept and released on request.

What Do I Need To Keep?

- Content determines whether something is a “record,” not the medium, format, or location.
- Your copy of documents distributed to the entire board is not considered a “record”; only the original in the library files is a record.

What Should I Do?

- There are no clear guidelines for this type of record.
- Some libraries create trustee email accounts for library business
- Some create physical files in the library office for trustees; anything the trustee receives in personal email can be printed and deposited in the library file.



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Records Retention

- State law requires that records of public agencies be kept for approved lengths of time and be disposed of in an approved manner
- Agencies are required to have records retention policies, which must be approved by the Public Records Board
- Lacking a policy, records may not be disposed of without prior approval by the Records Board
- Library may be under municipal policy or have its own

Multiple Copies

- Generally, only one copy of an item is a “record” under the law.
- Usually held by the originating authority

Record Retention Schedule for Wisconsin's Public Libraries and Public Library Systems

- Developed in 2005 by committee consisting of library staff, archivists, and staff from the Public Records Board and State Historical Society
- Revised version issued in 2017
- Adopt revision and send notification to state
- [More information](#)

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Retention Schedules Examples

- 005 Minutes and Meeting Materials PERM
 - Meeting minutes and attachments document all matters brought before the governing body (e.g. board of trustees) at meetings. These records document all changes to policies, resolutions, and correspondence. They include agendas, minutes, and supporting documentation. Supporting documents may include copies of the librarian/director's report, monthly financial/treasurer's reports, circulation reports, budgets, financial audits, committee reports and minutes, library flyers, newspaper clippings, or publicity materials concerning the library. This series does not include meeting notices, bulletins, or documentation of meeting related expenditures.
- 007 Director/Assistant Director's Reports CR+2
 - These reports to the governing body summarize current issues facing the library. They are both narrative and statistical, and include information received from department managers.
- 060 Personnel Files ACT+6 CONFIDENTIAL
 - These files are maintained for each employee and contain records that document all human resource related transactions that occurred during the employee's period of active employment. They are used to record employee performance and remuneration, maintain current contact information, and keep track of employee benefits (including retirement). These records document the qualifications possessed by the employee to carry out their duties. It includes resumes, letters of reference and/or a signed release for reference, transcripts, required licenses, notes and ratings from the job interview, the official letter of hire stating position and salary, performance evaluations, any changes to the position and rate of pay for the employee, any disciplinary reviews and outcomes, and requests for change in position. Retirement records document the eligibility for and determination of retirement benefits. These files include membership applications, notice by the employee of the qualifying event, application to receive retirement benefits, any change of name or address forms, and changes in designated beneficiaries forms. Leave records document any intervals in which the employee was not accruing retirement benefits. They may include the employee's request for a leave, any supporting documents, and managerial decisions. Life insurance files include enrollment and beneficiary forms for life and accidental death insurance plans. ACT = while individual is employed by the library.

Questions?



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Further Resources

- Your municipal clerk, administrator, or attorney
- Library system staff
- Shannon Schultz, Public Library Administration Consultant. (608) 266-7270
shannon.schultz@dpi.wi.gov
- Wisconsin Department of Justice. (608) 266-1221
- [Trustee Essentials Chapter 14](#)
- [Trustee Essentials Chapter 15](#)

Further Resources

- ◉ Wisconsin Department of Justice, Office of Open Government
 - ◉ Contains compliance guides and other information
- ◉ League of Wisconsin Municipalities legal resources
- ◉ Public Records—Open Meetings information from the DPI
- ◉ 2006 Records Retention Schedule
- ◉ 2017 Additions to Retention Schedule

Final Questions?



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"That's all Folks!"