

FINAL REPORT

2008 Wisconsin Public Records Audit

Wisconsin Freedom of Information Council

University of Wisconsin-Madison
School of Journalism and Mass Communication

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OVERVIEW

Since its creation in 1978, the Wisconsin Freedom of Information Council has sought to safeguard access to information that citizens must have to act responsibly in a free and democratic society. The importance of Wisconsin's open meetings and public laws has been central to the Council's advocacy and watchdog roles.

With the support of a grant from the National Freedom of Information Coalition, the Wisconsin Freedom of Information Council and the University of Wisconsin-Madison School of Journalism and Mass Communication conducted an audit in September and October 2008 to study how well local governments comply with basic public records requests.

The findings, detailed further below, suggest that most records custodians strive to provide access to citizens. However, problems were identified in about 30 percent of requests, demonstrating that hurdles still exist for citizens to obtain information they are entitled to under state statutes. One in 10 requests for basic documents were denied or ignored, while another two in 10 requests were fulfilled only after records custodians required the requesters to identify themselves or explain why they wanted the documents, in violation of state law.

Of the 318 reported responses, 228 responses, or 71 percent, were reported as being fulfilled without any problem. In 31 cases, requests were either denied or ignored, while another 59 requests were fulfilled with some problem, including custodians who required the identity of the requester or reasons for the request before complying.

The audit was modeled closely on the audit conducted by the Council in 1999, which shined light on a number of problems with public access to public documents. The 1999 audit garnered front-page headlines in newspapers throughout Wisconsin, led many local newscasts and received extensive attention from Wisconsin Public Television. It prompted a pledge to do better by the president of the Wisconsin Sheriffs and Deputy Sheriffs Association, after the Council found that more than half of Wisconsin's 72 county sheriff's offices failed to comply with the law when asked for the names of citizens who were jailed in the prior week. Then-Attorney General James Doyle, now Wisconsin's governor, lauded the Council's work and said it confirmed his belief that "we need to keep at it" by training public servants to comply with open government laws.

GOALS

The current project had several goals. The primary goal was to evaluate the general ability of citizens to access basic records by sending journalists and other citizens to conduct public records requests. This evaluation would involve filing five public records in each of Wisconsin's 72 counties, and the results would be compiled and reported publicly. A second goal was to strengthen partnerships with the Council and other open government advocates by engaging journalists, journalism students and other active citizens through the audit. A third goal was to provide greater public information about key open government issues through the creation of a website based on the work of student journalists at the University of Wisconsin-Madison. The website reporting can be found at www.wisfoic.org/audit/.

METHODOLOGY

The Council developed a list of five records to be requested of local governments throughout Wisconsin. Each question focused on a different level of local government: school districts, city police departments, county sheriff's offices, town boards, and mayor or city administrator offices. The records sought were to be plainly available under the state statute with minimal searching by records custodians.

Auditors were identified through solicitations of individuals affiliated with the Council and members of the Wisconsin Newspaper Association. UW-Madison journalism students in Professor Jack Mitchell's Intermediate Reporting class were also utilized. Commitments were obtained for audits in all of Wisconsin's 72 counties. The auditors were asked to request the documents in person, and news organizations were asked, when possible, to send individuals who would not be recognized as journalists. They were provided with a set of instructions and asked to send write-ups of their experiences to the audit coordinator.

Auditors were instructed to request the following:

1. **School Board.** Select the largest school district in your county and request "copies of meeting agendas and minutes that show each occasion when the school board went into closed session in April, May and June 2008."
2. **County Sheriff's Office.** Ask for a "jail booking log for the past 48 hours, or documents showing the names and tentative charges of individuals booked into the county jail in the past 48 hours."
3. **City Police Department.** Select the largest municipality in your county and ask for "documents, such as a list of police calls, that show when and why police were called to one given high school (provide them with the street address) between Jan. 1, 2008 and July 1, 2008."
4. **Township.** Select a township in your county and request "documents showing total legal fees paid by the town for the last complete fiscal year."

5. **City Mayor.** Select the largest city in your county and ask for “all e-mails sent by the chief municipal officer (the mayor or city administrator) on Sept. 2, 2008.” Request for them to be provided electronically.

Responses were obtained in 65 of the state's 72 counties. In total, 318 records requests were reviewed. Based on the write-ups from individual auditors, results received one of three codings: “yes,” “yes, but” and “no.” Requests receiving a “yes” code were fulfilled without any problem. “Yes, but” codings signify some problem existed with the handling or response but that the request was generally fulfilled. Some of these problems include a demand for the requester’s identity or purpose for the request. A “no” code indicates that the request was denied or ignored.

RESULTS

Of the 318 public records requests analyzed in this study, 228 requests (71%) were reported to be fulfilled with relative ease. An additional 59 requests (19%) were fulfilled, although auditors reported some difficulty, or were required to identify themselves or the reasons they sought the documents, which is not required under the state statutes. In 31 cases (10%), records requests were denied or ignored. In some counties and categories, no responses were tabulated, either because auditors did not clearly report the results or did not conduct requests.

The write-ups by auditors, including information about which municipalities were contacted, are available for inspection at the University of Wisconsin-Madison School of Journalism and Mass Communication. Contact project coordinator Jason Shepard at jmshepar@wisc.edu for more information.

The table on the next page documents the reported results by county.

Table of Results

y = request fulfilled without any problem
p = request fulfilled but with some problem
n = request denied or ignored
na = request not filed or results not available

	School Board	Sheriff's Office	Police Dept	Township	Mayor email
<u>County</u>					
Adams	p	n	y	y	y
Ashland	na	na	na	na	na
Barron	y	y	n	n	y
Bayfield	na	na	na	na	na
Brown	p	p	y	y	y
Buffalo	y	y	y	y	y
Burnett	na	na	na	na	na
Calumet	p	p	n	y	p
Chippewa	y	y	y	y	n
Clark	p	p	p	y	p
Columbia	p	p	y	y	y
Crawford	y	y	y	y	y
Dane	p	y	y	y	y
Dodge	p	p	y	y	y
Door	p	y	y	y	na
Douglas	p	y	y	n	y
Dunn	y	y	y	n	p
Eau Claire	p	n	y	y	p
Florence	y	y	n	y	NA
Fond du Lac	p	y	y	y	y
Forest	p	y	p	n	y
Grant	y	y	y	y	n
Green	y	p	n	y	y

Green Lake	na	na	na	na	na
Iowa	y	p	p	p	y
Iron	y	y	y	y	y
Jackson	p	y	p	y	n
Jefferson	y	y	y	na	y
Juneau	y	y	y	y	y
Kenosha	y	y	y	y	y
Kewaunee	Y	Y	y	Y	y
La Crosse	y	y	y	y	y
Lafayette	y	y	y	y	n
Langlade	y	y	y	y	n
Lincoln	p	p	p	na	y
Manitowoc	y	p	p	y	y
Marathon	y	p	y	y	y
Marinette	n	y	n	y	y
Marquette	y	y	y	y	y
Menominee	na	na	na	na	na
Milwaukee	y	y	y	y	y
Monroe	y	p	n	na	y
Oconto	y	p	p	y	p
Oneida	y	y	y	n	n
Outagamie	p	n	y	y	n
Ozaukee	y	n	y	y	y
Pepin	y	y	y	p	n
Pierce	y	y	y	y	y
Polk	y	p	p	p	p
Portage	y	y	y	y	y
Price	y	y	y	y	y
Racine	y	y	y	y	y
Richland	y	p	y	p	y
Rock	y	p	y	y	p

Rusk	y	y	y	y	y
Sauk	y	n	y	y	na
Sawyer	n	y	n	y	y
Shawano	na	na	na	na	na
Sheboygan	y	y	n	y	y
St. Croix	y	y	y	y	y
Taylor	y	y	y	y	y
Trempealeau	Y	Y	Y	Y	na
Vernon	Y	Y	p	p	Y
Vilas	y	y	y	y	y
Walworth	y	y	y	p	y
Washburn	na	na	na	na	na
Washington	p	p	n	p	y
Waukesha	y	y	y	y	p
Waupaca	p	y	n	p	p
Waushara	y	y	y	y	y
Winnebago	y	y	y	n	y
Wood	y	y	y	y	y

ISSUES

The audit was intended to be a general survey of public-records access. Scrutiny of individual requests and responses are complicated by a number of factors. Ideally, the requests were made by someone unfamiliar to the custodian and not identifiable as a journalist. However, some custodians were informed that the request was part of a Freedom of Information audit, while others knew the identities of the requesters, particularly in rural counties. Thus, it is difficult to determine whether average citizens would have been treated similarly. Also, while auditors were asked to report their experiences in requesting and obtaining the records, some simply reported that the request was fulfilled or not fulfilled. Thus, it is possible that the number of the requests coded as fulfilled actually should have been coded as fulfilled with some problem.

School Boards

The vast majority of school boards turned over copies of minutes to recent meetings. In total, only two school districts outright denied or ignored requests.

However, in the 63 other cases, disparities existed in access to agendas and minutes for closed session meetings of school boards. Some school districts readily turned over closed session minutes. Many of these minutes documented basic information about the meeting, such as the beginning and end times and general discussion points. For example, the Beaver Dam School District turned over minutes of closed session meetings that describe in general terms what the superintendent presented in closed sessions, the fact that discussion took place, and the conclusions reached by the board.

But most other school districts' responses suggest they kept no written record of what occurred in closed sessions. Several school districts referred the requests to lawyers. A school district in Pepin County, for example, hired an outside counsel to respond to the request. The lawyer's response suggested no minutes exist for closed session meetings and made mention of a local controversy involving a threatened lawsuit by the teachers union over the appropriateness of discussing budget cuts in closed session. Other school districts flatly rejected requests for closed session minutes. In Douglas County, for example, a reporter was told she would have to "sue" to gain access to closed session minutes, even after the reporter suggested the custodian redact the minutes for sensitive information.

The study's findings show that school boards do not seem to have a consistent approach to keeping minutes of closed session discussions, nor do they have consistent practices for dealing with requests for closed session minutes.

Jail Booking Logs

The FOIC audit in 1999 sought access to county jail booking logs, and 13 sheriff's offices refused to provide relevant documents. This finding prompted then-Attorney General Jim Doyle, now the governor, said he was "disappointed" in the findings. "The arrest sheet is a public record. We don't have secret arrests in this country," Doyle said at the time.

Some sheriff's offices didn't get the message. Of the 65 sheriff's offices surveyed this year, 1 in 3 sheriff's offices had problems in providing access to a list of recently booked inmates. Six offices refused to turn over records, while another 16 offices made auditors comply with requirements that violated the open records law.

In Adams County, a reporter was denied access to a list of people booked into the jail in the past 24 hours. A deputy "responded it was not public record. I asked again if I could get it and she said no," a reporter for the *Wisconsin Rapids Daily Tribune* reported. In Eau Claire County, a sheriff's deputy refused to provide a reporter with a jail booking log. The deputy said it was an "unusual request" by an "unfamiliar" person. The reporter was told she would have to "submit a written request to the sergeant explaining exactly who I was, why I wanted the information and what I intended to do with it."

Other sheriff's offices explicitly tried to deter access. In Dodge County, a deputy told a reporter that he would have to get back to her to determine how much it would cost to produce a jail log, telling the reporter "it was going to be a big project" for his staff. "He seemed frustrated that I asked for that information," the reporter wrote. The records were eventually turned over. One sheriff's office maintained that the request for a booking log was unique. In Ozaukee County, a jail deputy offered to look up an individual's name, but said the computer system did not allow for a search by booking date. "No one's ever asked us for that before," the deputy told a reporter for the *Journal Sentinel*.

Another issue discovered is that some sheriff's offices explicitly stated that they redacted from their jail booking logs any inmates booked in conjunction with immigration officials. The Dodge County sheriff's office, for example, wrote that enclosed "you will find those records excluding any bookings that we had with immigration authorities as after checking with the Immigration Authority, they will not allow release of those records."

In other counties, the booking log was immediately produced. Some county sheriff's offices print out a copy of the booking log each morning and have it available for anyone who requests it. The Kenosha County Sheriff's Office even post booking logs online. In Dane County, a secretary reported that a booking log used to be printed and available each morning, but the practice was stopped after reporters no longer regularly reviewed it.

Police calls to high schools

Requests for police calls to local high schools were granted in 55 cases and denied or ignored in 10 cases. The Waupaca Police Department denied a request for police calls to the local high school because juvenile names would be revealed, according to the requester. The law, however, requires custodians to redact sensitive information rather than deny access to the rest of the document. The majority of police departments readily turned over records, and many did so at the time of the request. The common theme in denials was simply not a response by the time the audit's results were compiled.

Town legal fees

The most significant problem encountered by requesters seeking documents showing the legal fees paid by town boards was the lack of a staffed town hall. When town clerks or town board chairmen were contacted, most were helpful. In 6 cases, requests were denied or ignored. Requests were fulfilled in 56 cases.

E-mails of city mayor or administrator

Several requesters reported that mayors or city administrators were surprised and taken aback by requests for e-mails they sent on a given date. Many consulted lawyers before turning over e-mails. In several smaller counties, mayors did not use e-mails for official business. In one of the more unusual reasons for denial, the City Attorney in Eau Claire County claimed at a request for all e-mails sent by the city manager on Sept. 2 "did not include a reasonable limitation as to subject matter." In total, 9 requests were either denied or ignored, and 52 were fulfilled.

Costs

While this study did not intend to survey the range of costs associated with records requests, several charges stood out as excessive. The Wisconsin Department of Justice advises that copying fees under the Open Records law should be "around 15 cents per page and that anything in excess of 25 cents may be suspect." Many of the requests were fulfilled free of charge, while many others were charged between 10 cents and 20 cents per page of photocopying. Many custodians required payment in advance. Others sent a bill. (The Rusk County Sheriff's Office sent a bill for 89 cents; 15 cents a page for three pages, 2 cents sales tax, and 42 cents for postage).

In other cases, costs were more significant. Sheriff's Offices in Richland and Grant Counties, for example, charged \$1 per page. The Vilas County Sheriff's Office charged \$5 for three pages that showed the booking information on five inmates. The Langlade County Sheriff's Office charged \$4 for a single page. The Forest County Sheriff's Office charged \$8 for 6 pages. The Racine Unified School District charged \$25 for minutes and agendas provided a computer disk. And the Kenosha Police Department charged \$5 for the first page, and a \$1 for each additional page for a list of police calls to the local high school.

AUDIT PARTICIPANTS

The following organizations participated in the audit: Wisconsin Rapids Daily Tribune, Green Bay Press Gazette, Appleton Post Crescent, Chippewa Herald, Marshfield News-Herald, Daily Citizen, Superior Daily Telegram, Eau Claire Leader-Telegram, Florence Mining News, Monroe Times, Green Lake Reporter, River Valley Newspaper Group, Juneau County Star-Times, Kenosha News, LaCrosse Tribune, Manitowoc Herald Times, Wausau Daily Herald, Marinette Eagle Herald, Portage Daily Register, Milwaukee Journal Sentinel, Gateway Publishing/Best Press, Osceola Sun, Stevens Point Journal, Racine Journal Times, The Lucy Burns Institute, The UWM Post, Galesville Republican and the Janesville Gazette.

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COUNCIL HISTORY

The Wisconsin Freedom of Information Council was created in 1978 after nearly two dozen state journalists agreed informally that the group should be formed to protect First Amendment rights. Their goal was to protect and promote access to public records and public meetings and to educate the public about press censorship issues. Today, the Council's stated mission is to "safeguard access to information that citizens must have to act responsibly in a free and democratic society."

COUNCIL MEMBERS

The Wisconsin FOIC bylaws call for 13 representatives of member organizations: three representatives from the Wisconsin Newspaper Association, three from the Wisconsin Associated Press, three from the Wisconsin Broadcasters Association/Broadcast News Council, two from the Society of Professional Journalists and two from the Wisconsin News Photographers. The bylaws also allow for up to 12 public members.

Current members are Bill Lueders, council president and news editor of *Isthmus* newspaper; Dick Mial, council secretary, *The LaCrosse Tribune*; Bob Drechsel, council treasurer, professor at University of Wisconsin-Madison School of Journalism and Mass Communication; Peter Fox, Wisconsin Newspaper Association; John Ingebritsen, *Grant County Herald Independent*; Dave Zweifel, *The Capital Times*; Roger Schneider, Associated Press; George Stanley, managing editor, *Milwaukee Journal-Sentinel*; Dick Record, WIZM AM/FM; Doug Wojcik, photographer, *Stevens Point Journal*; Hank Koshollek, photographer, *The Capital Times*; Anita Weier, reporter, *The Capital Times*; Jeff Hovind, Clearwater Resort; Ann Frisch, professor, UW-Oshkosh; Tom Bier, news director, WISC-TV; Tim Kelley, *Wisconsin State Journal*; James Friedman, attorney, Godfrey & Kahn Attorneys at Law; Bob Dreps, attorney, Godfrey & Kahn Attorneys at Law; John Laabs, Wisconsin Broadcasters Association; Dee Hall, reporter, *Wisconsin State Journal*; Mike Buelow, Wisconsin

Democracy Campaign; Christa Westerberg, attorney, Garvey, McNeil and McGillivray law firm; Bob Welch, Wisconsin Broadcasters Association; Craig Swanson, *Kenosha News*; John Byman, WTMJ; Randy Winter, WAOW; and Gina Duwe, *The Janesville Gazette*.