

Eric Toney Response

Question 1

In response to our questionnaire in 2022, both candidates said one of the biggest challenges to enforcing the state's public records and open meetings laws was a lack of resources. What has been done to close this gap and what more needs to be done? Would you ask the Legislature for additional funds to carry out the DOJ's duties?

Local district attorneys and the DOJ have concurrent authority to enforce open meetings law. The DOJ has an important role in supporting district attorneys. I've helped secure bipartisan resources across Wisconsin, including adding 50 positions to give district attorneys more capacity to address these issues and violent crimes in our community. At the same time, the Office of Open Government remains an important resource for interpreting and administering Wisconsin's Open Meetings and Public Records laws through compliance guides, correspondence, training and other resources. As Attorney General, I would focus on using the authority and resources already available more effectively before asking taxpayers for additional funding. The DOJ has capacity to take on open meetings cases when complex violations arise or violations of statewide importance. Local control is often the best place for public meeting violations to be enforced.

Question 2

The DOJ has not filed a public records or open meetings enforcement case since 2004. See *State v. Beaver Dam Area Development Corporation*, 2008 WI 90. Should the DOJ be taking a more active role in enforcement of the law? Why or why not?

I largely believe local district attorneys should remain the primary enforcers of Wisconsin's open meetings and public records laws because local control is important and DAs are closest to the communities they serve. The DOJ should be an important resource, particularly in complex cases, novel legal questions or matters with statewide implications. That requires better communication and coordination between the DOJ and local DAs. At the same time, the Attorney General should not hesitate to get involved when there is a recurring violation, a significant threat to public access or

an issue that requires statewide importance. The DOJ can also use advisory opinions, legal guidance and training to help resolve disputes before they require litigation.

Question 3

What can the DOJ do to reduce its response times to public records requests?

First, we need to look at the data and be honest about what it is telling us. The data shows that public records requests at the Wisconsin Department of Justice are taking far too long, with some requests taking years. That is unacceptable.

We are seeing a broader pattern at DOJ of things taking longer and promises being broken. I would also improve our efficiency on public records responses by maximizing the resources we have. There are assistant attorney generals with fewer than 20 open cases in Wisconsin courts - compared to many assistant district attorneys that handle over 200-500+ cases at any one time. It is clear that the DOJ has the bandwidth to handle more work with our current resources. Those AAGs with low caseloads would be assigned to assist with some public record responses to improve the timeliness of our public records responses at the DOJ.

As Attorney General, I would establish clear internal expectations for timely responses, hold the department accountable for meeting those expectations, and continue publicly tracking performance transparency. This transparency should not depend on who is asking the question or how long they are willing to wait.

The people of Wisconsin deserve a Department of Justice that follows through on its promises. The delays at our DOJ are another example of why we need accountability and a renewed commitment to transparency at the DOJ, which requires a change in leadership.

[The Council initially asked the candidates about the DOJ's average response times to public records requests during AG Kaul's tenure. However, the Council later became aware of a discrepancy in Office of Open Government reports bearing directly on this question that could not be immediately resolved. To ensure factual accuracy and to be fair to both candidates, we chose to revise the question and to disclose the reasoning here.]

Question 4

In 2018, the DOJ recommended that “authorities re-evaluate their copying fees” to more precisely reflect the “actual, necessary and direct costs of reproduction” by using the price of paper and per-page costs under a copier lease. The DOJ determined its actual cost for a single black-and-white page was \$0.0135, yet many government agencies continue to charge 25 cents or more per page. What will you do to address this problem?

As a DA, I provide public records for free whenever possible and generally only charge when a request is particularly large or costly to fulfill. I believe local governments should follow a similar approach. Public records requests should not be viewed as a way for the government to make money. Wisconsin law already establishes that reproduction fees generally cannot exceed the actual, necessary and direct cost of reproduction. The Attorney General’s Office of Open Government should provide clear guidance to municipalities and other government authorities on how to calculate permissible fees and ensure they follow the law. For complex or massive requests, there should be a way to recoup allowable costs, but fees should be about recovering those costs—not generating revenue.

Question 5

What if any changes should the state make to the public records and open meetings laws? Why?

The basic presumption that government records and meetings are open to the public should remain intact. But I believe we can make the law more clear and provide citizens stronger tools to enforce it. First, I would like to see specific legislation for the timelines of public-records request responses and fulfillment. The government should promptly acknowledge a request within a specific statutory timeframe and provide a response within a reasonable, defined statutory timeframe. If an agency cannot meet that timeframe, it should be required to explain why and provide an expected completion date. It should not take years for a citizen to receive public records, as it has from our Attorney General’s Office.

I would like legislation passed that allows citizens who successfully challenge an open-meetings violation to recover reasonable attorney fees, similar to the protections available under the public-records law. That gives citizens a meaningful way to enforce their right to open government. Finally, the Legislature should address areas where the law needs greater clarity, while balancing meaningful public access with legitimate privacy interests. The goal should be simple: government should be open, accountable and accessible to the people it serves.

Question 6

What ideas do you have to promote government transparency in Wisconsin, either at the state or local governmental level?

Government transparency starts with making it easier for the public to see how their government is operating. The state should offer tracking software or a web portal for municipalities to track their public records requests, responses, and fulfillments. It would improve public-records tracking and encourage agencies and municipalities to publicly report when requests are received, their status, and how long they take to fulfill. The standardized tracking resource from the state would allow communities to decide what works best for them without creating unnecessary costs or mandates. We also need to improve training, provide clearer guidance to government officials, and hold agencies accountable for timely responses. The Attorney General's Office must lead by example by timely fulfilling public records requests. Ultimately, transparency should not be something government promises—it should be something the public can measure. Unfortunately, that is lacking from our Attorney General.