



SECTION: RISK MANAGEMENT  
TOPIC: OPEN RECORDS  
DATE: January 2022

## ADMINISTRATIVE PRACTICES MANUAL

**SUBJECT: OPEN RECORDS REQUESTS**

### 1. PURPOSE

The purposes behind this policy and procedure are:

- To respect the rights of the people of Dane County;
- To ensure statutory and regulatory compliance; and
- To reduce litigation costs.

### 2. POLICY STATEMENT

Dane County recognizes that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those who represent them. Providing such information is an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. The denial of public access generally is contrary to the public interest, and Dane County will deny access only in an exceptional cases.

Therefore, Dane County presumes that its records are open to inspection and copying unless otherwise provided by law. It is Dane County's policy that any person may inspect, copy or photograph Dane County records during regular business hours, under such reasonable regulations and proper care as the custodian of the record prescribes and subject to the provisions of applicable law.

### 3. NOTICE REQUIREMENTS

- 3.1. Each Department should designate a Records Custodian. Departments with multiple Divisions may designate multiple Records Custodians.
- 3.2. Each Department should post a notice containing the information on the form notice which can be found on DCInet here: <http://dcinet/forms/pdf/014-46-25.pdf> .. The Notice lists established times when the public may access records, how to make requests for records, and the costs. The notice shall include the e-mail address of or website at which the legal custodian will accept electronic requests.
  - 3.2.1. Each Department which maintains regular office hours at the location where records are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.



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- 3.2.2. Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:
- Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or
  - Establish a period of at least two consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record. An authority imposing an advance notice requirement shall include a statement of the requirement in its notice, if the authority is required to adopt a notice under subsection (1).

### 4. REQUESTER

- 4.1. Anyone who requests inspection or a copy of a record will be considered a requester. A Dane County employee who requests a record that is unrelated to the employee's job duties will have their request treated in the same way as record requests received from the general public, except that employees have a greater right to obtain records containing personally identifiable information about themselves (subject to exceptions specified in Wisconsin Statutes).

### 5. SUFFICIENCY OF AN OPEN RECORDS REQUEST

- 5.1. A request may be made by written letter or electronically. If the request is made electronically, the Record Custodian may respond by letter or electronically.
- 5.2. A request is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.

### 6. OPEN RECORDS REQUESTS MAY BE MADE ORALLY

- 6.1. An open records request may also be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37, Wis. Stats.
- 6.2. If a request is made orally, the Records Custodian may deny the request orally using the criteria set forth below.
- 6.3. If the Records Custodian orally denies an oral open records request and the requestor demands a written statement of the reasons for the denial, then the Records Custodian must send the requestor such a written statement within five business days of the oral denial.



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### 7. RESPONSE TO AN OPEN RECORDS REQUEST

- 7.1. As set forth in Dane County's Document Retention and Destruction Policy, each agency within Dane County designates its own Record Custodian. Only legal custodians or their designees may grant (in whole or in part) or deny (in whole or in part) an open records request.
- 7.2. Each Record Custodian has the discretion to draft its own procedure to respond to open records requests, as long as those procedures comply with Wisconsin State Statutes and Chapter 16 of the Dane County Code of Ordinances pertaining to Records Control. In general, each Record Custodian must ensure that Dane County records may be inspected, copied, photographed by any person, with proper care, during regular business hours, under such reasonable regulations as the custodian of the record prescribes and at all times subject to the provisions of s. 19.35, Wis. Stats.
- 7.3. At the time the request for the record is made, the Record Custodian must make a specific determination whether or not there is a need to restrict public access to the requested. Specifically, the custodian must determine (a) whether there are important public policy interests which would be harmed if the records were released, and, if so, (b) whether the strong public policy in favor of disclosure outweighs these interests.

### 8. GRANTING AN OPEN RECORDS REQUEST

- 8.1. If access is granted, then the Record Custodian shall, as soon as practicable, make available any record produced or collected under a contract entered into by the authority with a person other than the authority to the same extent as if the record were maintained by the authority.
- 8.2. The Record Custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.
- 8.3. A person requesting access to a public record may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

### 9. DENYING AN OPEN RECORDS REQUEST

- 9.1. Any questions about whether a record is exempt from release should be directed to the Office of the Corporation Counsel.



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- 9.2. If the Records Custodian determines that the request should be denied (in whole or in part), then the Record Custodian must inform the requestor of the specific reasons for the denial. Generalized statements of legal conclusions are not sufficient.
- 9.3. Written requests for inspection of any public record can only be denied (in whole or in part) based upon a written statement clearly articulating the reasons why the request was denied. Every written denial of a request shall:
  - Inform the requestor that the determination is subject to review upon petition for a writ of mandamus under s. 19.37(1), Wis. Stats., or upon application to the attorney general or a district attorney; and
  - Be sent to Dane County Risk Management and the requestor, as soon as practicable after receiving the request.
- 9.4. No request for a record inspection or copying of a record may be refused because the person making the request is unwilling to be identified or to state the purpose of the request.
- 9.5. No request may be refused because the request is received by mail unless prepayment of a fee is required under Wisconsin Statutes.

## 10. REASONS FOR DENYING AN OPEN RECORDS REQUEST

Wisconsin Statutes and common law provide for the following exemptions to disclosure of records. If there is no specific statutory or common law exception to disclosure, public records requests may be denied when the public's right to the information is outweighed by a public interest in non-disclosure. This balancing test must be conducted on a case-by-case basis.

- 10.1. The request does not pertain to a "record" as defined by Wisconsin Statutes or Dane County Ordinances. Please see the Administrative Practices Manual policy entitled Document Management Overview for a definition of "record."
- 10.2. The requested records are specifically exempted from disclosure by state or federal law, except that any portion of that record which contains public information is open to public inspection.
- 10.3. The requested records may be exempted from disclosure by state law, except that any portion of that record which contains public information is open to public inspection.
- 10.4. The requested records contain personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court



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proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

- 10.5. The request records contain personally identifiable information that, if disclosed, would endanger an individual's life or safety, identify a confidential informant, endanger the security of a state facility, or compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail.
- 10.6. The requested records are not indexed, arranged or automated in a way that the requested records can be retrieved by an individual's name, address or other identifier.
- 10.7. Whenever federal law or regulation require or as a condition to receipt of aids by the state require that any record relating to investigative information obtained for law enforcement purposes be withheld, the information is exempt from disclosure.
- 10.8. A computer program is not subject to examination or copying, but the material used as input for a computer program or the material produced as a product of the computer program is subject to release.
- 10.9. An authority may withhold access to any portion of a record that contains information qualifying as a trade secret.
- 10.10. The identities and applications of candidates for public positions may be withheld in some instances. Wis. Stats.
- 10.11. Deliberations concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- 10.12. Considerations re: dismissal, demotion, licensing or discipline.
- 10.13. Consideration of employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- 10.14. Considering strategy for crime detection or prevention.
- 10.15. Deliberating or negotiating the purchasing of public properties, the investment of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.



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- 10.16.** 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 the person to whom the records refers.
- 10.17.** Conferring with legal counsel.
- 10.18.** Patient Health Care Records as allowed under Wis. Stat. § 146.82 and HIPAA
- 10.19.** Pupil Records. Wis. Stat. § 118.25
- 10.20.** Records Containing Information about children/juveniles. Wis. Stat. Chapters 48 and 938
- 10.21.** Mental Health Treatment Records. Wis. Stat. §§ 51.30(1)(am), 51.30(1)(b) and 51.30(4)
- 10.22.** Personnel Records: Access to employee personnel records containing the following information shall not be released:
- Home address, e-mail address or telephone number or the social security number of an employee, unless the employee authorizes the release. Wis. Stats. § 19.36(10)(a)
  - Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to the disposition of the investigation. Wis. Stats. § 19.36(10)(b)
  - Information pertaining to an employee's employment examination, except an examination score. Wis. Stats. § 19.36(10)(c)
  - Information about an employee that is used by the authority for staff management planning, including performance evaluations, judgments or recommendations concerning future salary adjustments, bonus plans, promotions, job assignments, letters of reference or other comments or ratings related to the employee. Wis. Stats. § 19.36(10)(d)
  - Certain personnel records may be released if the subject of the record receives notice. Any questions about whether a personnel record may be released should be directed to the Office of the Corporation Counsel.

**END OF NARRATIVE**