

USING OPEN RECORDS LAWS TO UNCOVER SECRETS

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What is Wisconsin's public records law and why do I love it so much?

Because she is so beautiful!

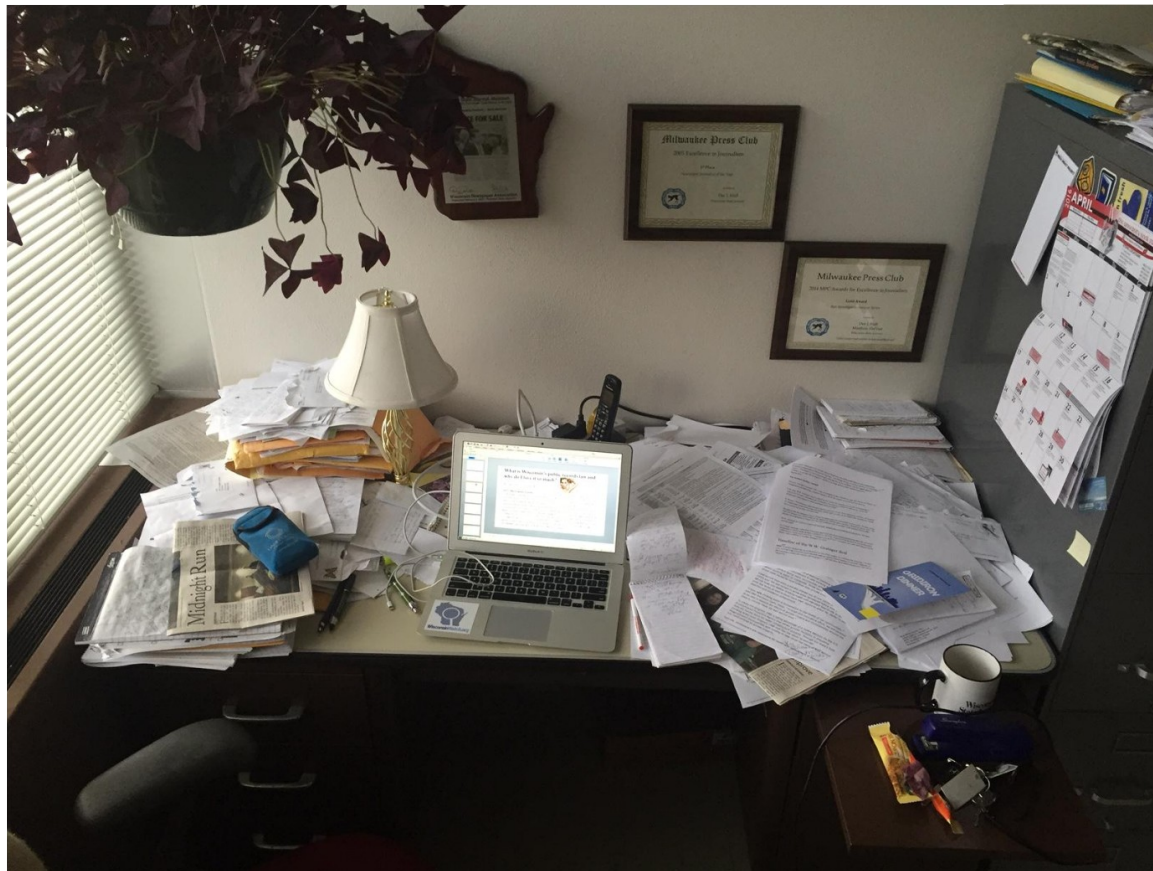


Chapter 19

Wisconsin's public records law

19.31 Declaration of policy. In recognition of the fact that a representative government is dependent upon an informed electorate, it 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.* Further, providing persons with such information is declared to be 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. To that end, ss. [19.32](#) to [19.37](#) *shall be construed in every instance with a presumption of complete public access,* consistent with the conduct of governmental business. *The denial of public access generally is contrary to the public interest,* and only in an exceptional case may access be denied. *(emphasis added)*

Obsessed with records: True portrait



What types of records can you get?

At any one time, I have at least one and possibly more open-records requests pending. Open-records requests are the No. 1 strategy that I use to peek behind the veil of government.

Anything that's on paper or digital, you can ask for and, in most cases, get.

Dozens of types of records are covered by the open-records law:

Audits, databases, payroll documents, time slips, office calendars, phone messages, text messages, chats, complaints, police reports, criminal referrals, disciplinary reports, airplane flight logs and passenger manifests, official calendars, prosecutors' files, 9/11 tapes, surveillance video (including cameras on police cars), "work product," invoices, receipts, "secret" court documents, applications for jobs, resumes, data from gated government parking garages, sick notes turned in by public employees, photos, emails (including those sent and received from private accounts if done for public business.)

You can obtain **drafts** but usually only after it has been circulated beyond the person who requested it or wrote it. It's sometimes interesting to compare the drafts of bills, reports and contracts to the final version.

Who can request records?

Anyone. The requester need not state the purpose of the request.

The requester generally need not identify himself or herself.

Motive is generally not relevant, but judges have considered the context in decisions.

What if they say no?

Forget about it!!!

I never take no for an answer, at least not at first. Make sure the agency spells out the reasons for denial and figure out whether you can make an argument against those exceptions by consulting the open-records law and relevant court cases. Common reasons for denial under the open-records law include trade secrets, pending investigations and concerns about job applicants being scared off by public disclosure. Push back against such reasons unless they are spelled out in state or case law.

Appeal.

If you are refused a public record, you can ask the local district attorney to force the agency to give it up. To research case law and advisories that might fit the records you're seeking, you can consult the Wisconsin Freedom of Information Council website, www.wisfoic.org, or the Attorney General's [Public Records Compliance Guide](#).

Sue.

If all else fails, file a lawsuit. You can even do it without a lawyer. If you win, you can recoup your legal costs.

What can't you get?

Medical and psychiatric records: This is not a hard and fast rule, but such records are very difficult to get unless the person mentioned in them agrees to it. I have had success in several cases in which people with mental illness or other medical problems have agreed to let me receive copies of their medical records.

Prosecutors' files: Prosecutors can give you access to their files if they want, but a 1991 court decision allows them to exempt such files if they choose.

Lawmakers' records: While you can have access to state legislators' records, they are not required to retain them, like other public officials are. That means they can delete emails as soon as they come in, or ash-can records they might find embarrassing. **They can't do it if you've already requested them.**

Juvenile court records: You can see juvenile court records and even quote from them, but you generally cannot keep copies and cannot reveal the names of juveniles involved.

Candidate finalists for the University of Wisconsin; and police confidential informants: For some reason, our wise leaders have placed these two vastly different types of individuals in the same category.

How do you ask for public records?

You need to start with a written request. The Wisconsin Freedom of Information Council website is set up just for that purpose. Consult <http://www.wisfoic.org/> for help.

Also, please email me at dhall@wisconsinwatch.org and I'd be happy to send you an electronic copy that you can modify for your own purposes.

I prefer sending my requests via email because then the date and time of the request are handily recorded. However, some agencies will only accept requests sent via their website or written requests that come by fax, snail mail or hand delivery.

Seldom used, sometimes successful strategies

Occasionally, I have hit a wall. Here are three strategies I have used to tear that wall down.

Strategy 1

1) **Ask the DA:** The Oshkosh Police Department denied access to a polygraph test that it had claimed proved that their key witness in a murder trial was telling the truth. The police denied access to the polygraph material claiming it was a “private medical record.” I argued that this purportedly private information was revealed in open court and asked the Winnebago County district attorney to order the police to turn it over. They did. Two polygraph examiners examined the results and determined the test was so flawed there would be no way to determine whether the man was telling the truth or lying.

Strategy 1 continued

Ask the DA II: Prosecutors can shield their files from public review. But sometimes, a district attorney will agree to open them up. I've seen full-fledged prosecution files complete with sticky notes and words scrawled in the margin in three Wisconsin counties. In each case, I found a story.

- In one case, I found proof that an assistant DA had knowingly kept an 18-year-old high school student in jail for a month on a warrant issued against the young man's brother, despite repeated warnings from jail officials that the wrong person was behind bars.
- In another case, I discovered that a prosecutor ordered extensive editing to a police videotape used to convict a Green Bay police officer of arson — editing never disclosed to the defense.
- In a third instance, I found former state Sen. Gary George had used his taxpayer-funded chief of staff to work on cases for his private law firm.

Strategy 2



Ask the judge: After a series of stories I wrote about a history of sexual harassment by the former head of Madison’s Overture Center for the Arts, one of the victims filed a federal lawsuit, seeking compensation for the years she had been harassed by Robert D’Angelo.

I discovered that depositions of top Madison officials, including two previous mayors and the current mayor, were filed with the U.S. District Court. Unable to access them by PACER, I wrote a letter to the judge, asking to see the depositions. During a hearing, he said the depositions had been sealed, to which all of the attorneys nodded in agreement. When I reminded the judge that he had never ordered them sealed, he fairly quickly opened up the depositions. They revealed that one former mayor who had claimed she had “no idea” about D’Angelo’s lengthy history of harassment had in fact kept an envelope in her desk at City Hall with all of the dirty secrets.

Public records to the rescue!



Sometimes public records are the only way to the truth. Here are stories in which public records played the hero.

Arson or accident?

I used records from the State Fire Marshal's Office to expose the use of private, unaccountable insurance companies in investigating alleged arson, despite their obvious financial conflicts of interest.

The most important material was contained in the fire marshal's investigative file, which showed that bar owner Joseph Awe was considered a suspect on day one, even though he was 35 miles away when the blaze broke out.

Awe has since been exonerated.

And he recently won an undisclosed settlement from his insurance company.



BURNING QUESTIONS: ARSON OR ACCIDENT?
A STATE JOURNAL SPECIAL REPORT | FIRST OF FOUR PARTS

INSURING A CONVICTION?

After 2006 blaze destroys bar, insurer leads search for a cause



Marquette County Sheriff photos

Top: Firefighters work to extinguish the Sept. 11, 2006, blaze at J.J.'s Pub in Harrisville, 65 miles north of Madison. Officials quickly suspected the fire was intentionally set, despite electrical problems at the 130-year-old building. **Above:** Investigators pore over what's left of the pub, searching for the cause and origin of the fire.

By DEE J. HALL
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HARRISVILLE — The frantic pounding on his front door jolted Kean Fravel out of bed. It was sometime after 4 a.m. on Sept. 11, 2006, when a woman he'd never met shouted that J.J.'s Pub, the bar just steps from Fravel's apartment in this central Wisconsin town, was on fire.

Fravel, a wiry, 29-year-old machinist, dialed his landlord Joseph "Joey" Awe, a gregarious 36-year-old disabled Gulf War veteran who owned the bar and the apartment.

"Joe, you got to get here right now. The bar's on fire," Fravel said.

Awe, still half asleep, asked if his friend was joking. "Joe, I'm not jerking your chain."

Farmer Brad Kolpin was milking cows when the 911 call came in. Kolpin is chief of the Harris Volunteer Fire Department. He called in departments from around the Westfield area to help battle the blaze that was rapidly consuming the two-story, 130-year-old landmark. No one was in the bar, and the newly renovated apartment above it was temporarily unoccupied.

Shortly after firefighters got there, Awe arrived with

THE SERIES

After Joey Awe's Marquette County bar burned down in 2006, authorities immediately suspected the gregarious, disabled Gulf War veteran of arson.

The state's case was built largely on an investigation paid for by Awe's insurance company, which had a stake in the outcome: If someone set the blaze, the company wouldn't have to pay out.

Experts, meanwhile, are calling into question long-held assumptions about how fires start and spread.

Today: Did someone set the fire that destroyed J.J.'s Pub?

Monday: Insurance company builds a criminal case.

Tuesday: "He had a disaster. And they framed him."

Wednesday: The evolving science of fire investigations.

Paroles fall under Walker

Advocates for parole-eligible inmates had been complaining that the state was no longer granting paroles. But the state Department of Corrections and state Parole Commission refused comment.

Their own records, however, showed a clear trend: **The number of paroles had plummeted soon after the Gov. Scott Walker took office and appointed a new head of the Parole Commission.** It was the state's own records that allowed us to reach those conclusions, bolstering what activists were hearing from prisoners and their families.

Clay invasion



ABOVE: Ceramic cups made by artists from around the world are on display at the INART Gallery, 133 W. Johnson St. The gallery is one of many in Wisconsin hoping to draw in visitors from the world's largest annual conference on ceramics, being held in Milwaukee this month. **TOP:** Working at Higher Fire Clay Studio, Leora Saposnik forms a ceramic art piece Wednesday for an upcoming show. Higher Fire is one of several venues in the Madison area that hope to draw visiting clay artists going to the conference.

Ceramics are taking center stage in the state as "the world's largest" event for the art prepares to open in Milwaukee.

GAYLE MORLAND
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For Wisconsin art fans, this is the month to make hay with clay. Ceramics are making a star appearance across the Madison area in March — in museums, galleries, studios and schools — all in hopes of drawing a clay-crazed audience from around the world. The idea is to lure some of the 4,500 artists and teachers descending upon Milwaukee to attend the National Council on Education for the Ceramic Arts conference, held March 19-22. Billed as "the world's largest event held in the field of ceramic arts," the NCECA (nicknamed "en-SEE-ka") gathering takes place annually, each year in a different city. The event spawns a sort of "clay tourism" throughout its host region — and Madison is not standing by. "There's going to be more clay shows in Madison than I think at any other time — ever," said artist Ardree Valley, who teaches ceramics at Madison Area Technical College. Adrenaline Clay Studios, located on the Art Ventures Campus of Bethel Horizons in rural Dodgeville, is using the opportunity to host "blockbuster" workshops and bring attention to its growing arts education and retreat center. "We're trying to fit in the momentum of the Milwaukee conference," said Art Ventures director Jennifer Mally. "We are really gathering people from all over the country!"

CRIMINAL JUSTICE

Walker tough on paroles

The number of convicts granted early release has plummeted since the last governor's administration.

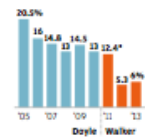
DEE L. HALL
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Under Gov. Scott Walker, the Wisconsin Parole Commission has severely curtailed parole for more than 2,800 inmates who committed crimes before the "truth-in-sentencing" law took effect in 2000, new figures show.

Many of those inmates were given lengthy sentences under the "old law" with the proviso that they could be released after serving as little as one-fourth to no more than two-thirds of their sentences.

Fewer inmates granted parole under Gov. Walker

Percent of parole requests granted in Wisconsin by year.

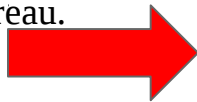


* Data for Aug.-Nov. 2011 not available. SOURCE: Wisconsin Parole Commission. State journal

Inmates were supposed to be evaluated yearly by the Parole Commission for eligibility for release based on their conduct behind bars, completion of educational programming or treatment, and whether they had "served sufficient time so that release would not depreciate the seriousness of the offense." If released, parolees must check in regularly with agents and can be returned to prison to serve their full term if they violate terms of their parole. New numbers show only a small percentage of inmates are paroled each month, a proportion that dropped sharply soon after Walker, a Republican, took office in January 2011. Under Walker, 6 percent of parole requests were granted in 2013 and 5.3 percent in 2012. That compares to 14.5 percent in 2009 and 13 percent in 2010, the final year of the administration of

Bonus!

Sometimes the best records are right in plain sight. This was an email sent by a wealthy dad to an aide to Rep. Joel Kleefisch, who wrote a bill to get him out of hefty child-support payments. The message was among the drafting files on the state legislative website. Lawmakers have since removed the files from the Internet but you can get them at the Legislative Reference Bureau.



Kahler, Pam

From: Moore, Ashlee
Sent: Friday, September 06, 2013 9:18 AM
To: Kahler, Pam
Subject: FW: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.
Attachments: eisenga 9-5-13 lt2.pdf

Pam,

Can you make this change to the combined draft of AB 211 and the Child Support Legislation?

Also, can you make this change to just the Child Support Legislation so I can re-jacket it (again)?

I apologize for all the changes. This should be the last of them. Thank you for all your help

Ashlee Moore
Representative Joel Kleefisch – 38th Assembly District
307 North, State Capitol – (608) 266-8551

-----Original Message-----

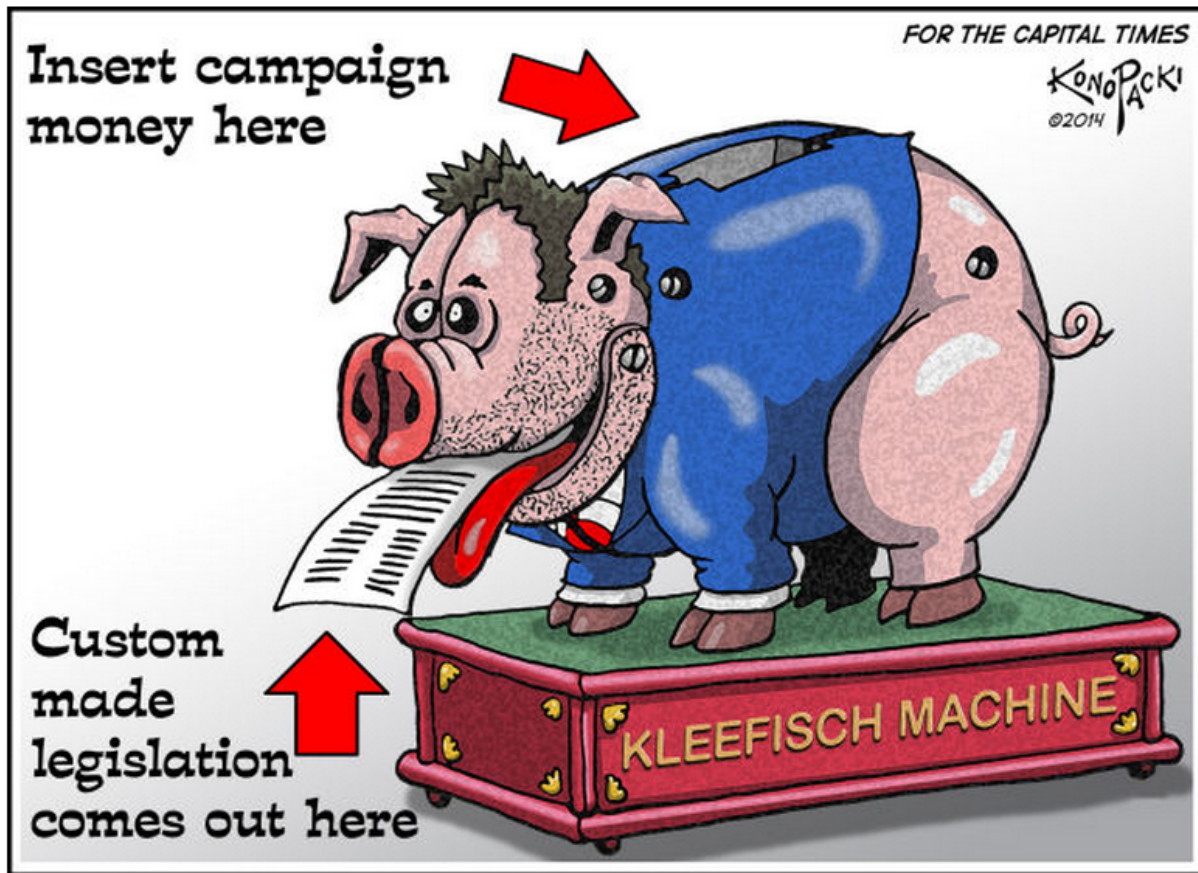
From: Michael Eisenga [mailto:MEisenga@alshomeeloans.com]
Sent: Thursday, September 05, 2013 7:25 PM
To: Jeff Fitzgerald; Moore, Ashlee; Kleefisch, Joel
Subject: FW: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

Please have the drafter make these SPECIFIC changes to the bill when she combines them.

Michael S. Eisenga
President

Oops!

The public outcry forced Kleefisch to withdraw the bill but not before he was left with a little bit of manure on his shoes.



News organizations of all sizes use Wisconsin's public records law



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Records unveil Sauk County disputes, allegations

TIM DAMOS tdamos@wiscnews.com Jan 13, 2017

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April 16, 2016

1/29/2016 7:30:00 AM

Times prevails in records' lawsuit against sheriff's department *Appeal possible; judge imposes gag order*

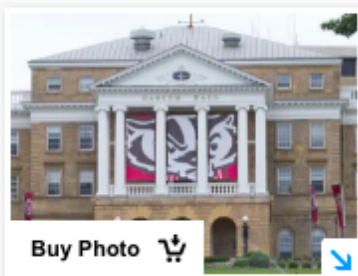


Richard Moore
Investigative Reporter

Total \$591,050 paid to settle UW-Madison sexual harassment cases in past decade

Karen Herzog, Milwaukee Journal Sentinel

Published 7:16 a.m. CT April 10, 2018 | Updated 5:43 p.m. CT April 10, 2018



(Photo: Mark Hoffman, Milwaukee Journal Sentinel)



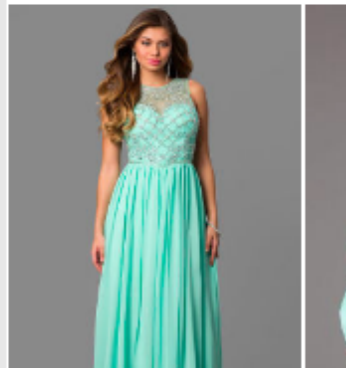
Undergraduate female students lodged seven sexual harassment complaints against University of Wisconsin-Madison faculty, academic staffers and graduate students over the past decade, including one that resulted in a firing.

That's according to hundreds of pages of heavily redacted documents from a total of 20 sexual harassment cases since 2008 that were released to the Milwaukee Journal Sentinel and other news outlets this week.

Six cases filed by female employees since 2008 led to settlements totaling \$591,050. Of that amount, \$100,000 came from the UW Hospital and Clinic Authority, while the rest came from state funds.

Three settlements were for six-figure amounts of \$250,000, \$200,000, and \$119,000.

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The cost of open records

Records generally cost 10-25 cents per page. Anything above 25 cents, except for court records, is suspect, according to guidance from the Attorney General's Office.

Records custodians in Wisconsin can charge for the **cost of locating records** when it exceeds \$50, although they also can waive those fees if you ask them to. The exception here is court records, which tend to run \$1.25 a page and are rarely, if ever, waived. (I usually to ask defense attorneys, prosecutors, or plaintiffs for lawsuits to save the high cost of court records.) Some clerks will let you take photos of records for free, but the attorney general has advised that clerks can charge \$1.25 a page for that as well.

If you receive a hefty estimate for locating records, you have a few options:

- Ask for a specific breakdown on how many hours, who would do the searching and what that person earns per hour.
- Discuss how the search could be streamlined or the records request modified to reduce search fees.
- Ask for a waiver of some or all of the fees.

Records custodians **cannot** charge you for the **cost of reviewing and redacting records**. Those charges are considered part of their public duties as custodians.

Recent open records wins, losses

A Racine County judge allowed the Racine city attorney to [shield records of his dispute](#) with a member of the City Council, citing attorney-client privilege.

In November, a Dane County judge [ordered](#) the state Department of Justice to release unredacted disciplinary records of 19 employees after the DOJ had stonewalled the Lakeland Times.

The state Department of Natural Resources denied a request from The Associated Press for records regarding the conduct of a DNR employee. The DNR contended that identifying the employee would damage morale and hurt its ability to hire staff and conduct future investigations.

A month later, the department relented and released the record, which showed that the employee had been disciplined for harassing female co-workers.

The Wisconsin Legislature continues to enjoy a unique exemption: Members can destroy records as soon as they receive them. Sen. Chris Larson calls this “an invitation to corruption.”

He noted that some lawmakers [destroyed the emails](#) they received urging them to vote against the package of lame-duck bills they passed in December.

The Oconto County Record had to sue the Oconto Police and Fire Commission to get records naming finalists for the position of police chief.

Why are these records important? The public and journalists often uncover information about a finalist's background that a search committee misses.

Challenges ahead for Wisconsin

The status of police body camera video: Will it be public?

Proposals to expand expungements could lead to court files being permanently sealed or even destroyed.

Long delays and high costs continue for requesters.

The Center for Media and Democracy has raised concerns about a possible merger of the Legislative Reference Bureau and Legislative Council, which could lead to reduced transparency, such as the sealing of bill drafting files.