

Wisconsin's Public Records Law: Guidelines for Employees **December 1, 2020**

The Purpose of the Public Records Law

Wisconsin's Public Records Law, Wis. Stats. §[19.31-19.39](#) is designed to serve two essential functions: transparency and accountability regarding the affairs of the government and the official acts of its officers and employees. As a unit of the state government, UW-Madison is subject to the Law, and the records of University officers and employees are subject to public access. Further, the Law presumes that denial of public access to this information is contrary to the public interest and only in exceptional cases may access be denied.

The Public Records Law Applies to Employees at UW-Madison

The Wisconsin Public Records Law applies to any "record" created or kept by an "authority." An "authority" includes UW-Madison or other public bodies created by the Wisconsin constitution, law, ordinance, rule or order, and includes formally constituted subunits of government.

A "record" is any material on which information is recorded, regardless of physical form or characteristics, that relates to University business. A "record" is also anything created in an electronic format, including emails and information stored in online or physical databases that relates to University business.

If UW-Madison receives a public records request for the records of its faculty or staff, the Public Records Custodian must look through responsive records to determine which records fall within the scope of the request. In certain circumstances, this task may be facilitated through an electronic search of records facilitated by DoIT.

Email Guidelines

Don't forward your wisc.edu email account to your personal email account or use a personal account for work-related email. It is important that faculty and staff use a wisc.edu email address for University work. An email is not exempt from a public records request because it has been sent to or from a personal email account; it is the content, not the medium, that determines whether a communication is a public record.

Using a personal email account for UW-Madison work purposes subjects personal email to inspection for emails that may fall within the scope of a public records request. While UW-Madison permits minimal personal use of University email, best practice is to use personal email accounts to send and receive non-work-related emails.

Text Message Guidelines

Text messages are also considered public records if they relate to University business, even if the text is sent or received from your personal cell phone. Similar to emails sent from a personal account, if the message constitutes a public record when it is sent from a work email, then it is also a public record when texted from a personal cell phone.

Public Records Notice Posting

The Public Records Law requires the University to post a notice that contains a description of the methods and processes through which the public may obtain information and access public records. This University-wide notice appears outside the Public Records Office, Room 352 Bascom Hall.

We recommend that a notice also be posted on a conspicuous and central bulletin board in each school, college, or unit's administrative offices. A copy of the notice document recommended for such use at UW-Madison may be obtained by contacting a Public Records Custodian.

Requesting Records from the University

The Law allows any individual to request access to public records, with a few exceptions.¹ Both the identity and the motive of the requester are generally irrelevant to determining whether an individual may request records under the Law. No request may be denied because the person making it is unwilling to be identified or is unwilling to state the purpose for making the request.

What Constitutes a Request

The Wisconsin Legislature made it simple to request public records: All that is required by the Law is that the request reasonably describes the record or the information desired.²

¹ An individual who is incarcerated in a state, county, or municipal correctional facility, or a person committed to a mental health facility for violation of various criminal statutes may not make a public records request.

² While no specific language is required to make a request pursuant to the Public Records Law, this Guidance does not apply to situations where employees request and are provided with copies of documents related to their University employment (see Section 103.13 of the Wisconsin Statutes), nor when individuals or organizations doing business with the University may make requests for and receive documents related to that business (e.g., a sponsor of a clinical trial can request and receive documents related to that study outside of the public records request process).

What to Do if You Receive a Request

If you are contacted by someone seeking records under the Public Records Law, you can direct that person to submit the request through the [UW-Madison Public Records Portal](#).

You can also send the request (or the requester) directly to [Lisa Hull](#), UW-Madison's Public Records Custodian, or [Elizabeth Wilkerson](#), the Deputy Public Records Custodian. The Public Records Custodians will communicate with the requester about the request, help the record holders identify any responsive records, and respond to the request.

The Public Records Office Response to a Request

The Public Records Custodians and the Office of Compliance ("OC") are principally responsible for responding to public records requests. It is important that the Public Records Custodians handle requests under the Public Records Law, as there is specific information that must be included when responding to these requests.

However, all employees are responsible for making records available when advised to do so by the Public Records Custodians, the Director of Compliance or the Vice Chancellor for Legal Affairs. As a public employee, you have a legal responsibility to assist the Public Records Custodians in accessing the requested documents and to provide potentially responsive documents when requested. Failure to do so may result in discipline and may constitute misconduct in public office. It is also expected that you will cooperate with the Office of Legal Affairs in its representation of the University. This includes assisting University attorneys with requests under the Public Records Law and cooperating in their defense of the University against any claims brought against the University. Failure to cooperate in such defense may render you ineligible for legal counsel and indemnification from the State for any resulting liability for failure to provide records.

When responding to a public records request, a Public Records Custodian inspects all documents that may fall within the scope of the request. The Public Records Custodian, however, does not perform this task alone. The Public Records Custodian will contact the record holder in order to discuss where the records are kept and how to access those records. After inspecting all relevant records, the Public Records Custodian will work with the record holder to find other potentially relevant records, and to discuss whether any information in the records, or the records themselves, may be redacted or withheld under the Public Records Law.

Timeline for Responding to a Request

The Law requires a request be answered "as soon as is practicable and without delay." While this standard will vary with the nature and extent of each individual request, all public records requests are important and compliance with the Law should be made a priority. A delay in responding to a request exposes the University to potential liability. As such, it is imperative that any faculty or staff receiving a public records request notify the Public Records Office as soon as

possible so that a communication back to the requester occurs within ten (10) business days of the request.

If you have further questions about the Public Records Law, contact:

Public Records Custodians

Lisa Hull – lisa.hull@wisc.edu or 890-4881

Elizabeth Wilkerson – elizabeth.wilkerson@wisc.edu or 265-9045