

STATE OF WI OPEN RECORDS/OPEN MEETINGS LAW IN BRIEFⁱ

Wisconsin's Open Records Law establishes procedures for designating legal custodians of government records and regulates inspection and copying of those records. The Open Records Law is based on a strong presumption in favor of public access to state and local government records; this presumption applies whether or not the information in the record contains personally identifiable information.

State of WI Statutes §19.31 thru §19.39 define open records law for elected officials and governmental employees alike, these statutes are built on the assumption that "a representative government is dependant on an informed electorate...entitled to the greatest possible information regarding the affairs of the government and the official acts of those officers and employees who represent them. [s. 19.31, Stats.]

Records

The definition of "record" reads...any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. [s. 19.32 (2), Stats.]

Right to Access

In general, any citizen has the right under State of WI Statute to request inspection of **any** record, specifically defined exceptions exist: drafts, notes, preliminary computations, records with no relation to the actions of the office, copyrighted or patented materials, materials available in a public library, among other statutorily defined exceptions. [ss. 19.32 (2), 19.36 (1), (2), (4), et al]

The citizens enjoy the same protections provided under the assumptions of representative government under Open Meetings Law as provided under Open Records Law. The requirements are further defined in State of WI Statutes §19.81 thru §19.98.

Definition of Meeting

State of WI Statute §19.82 (2) defines a meeting as...

"[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body."

The Wisconsin Supreme Court has further opined, in the *Showers* case, that the requirements under Open Meeting Law applies when two requirements are satisfied:

1. **There is a purpose to engage in government business**, defined as "any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body's realm of authority." [Showers, 135 Wis. 2d at 102-03.]

2. **The number of members present is sufficient to determine the governmental body's course of action.** The presence of members of a governmental body does not, in itself, establish the existence of a "meeting" subject to the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting." Wis. Stat. § 19.82(2). The law also exempts any "social" or chance gathering" not intended to circumvent the requirements of the open meetings law. Wis. Stat. § 19.82(2). Thus, members of a governmental body may overcome the presumption of a meeting by establishing that they did not discuss or act on business within the governmental body's authority. Generally, the simple majority rule applies.
- **Walking Quorums:** A "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. [Showers, 135 Wis. 2d at 92, quoting Conta, 71 Wis. 2d at 687]. The widespread use of electronic mail and other electronic message technologies creates special dangers for governmental officials trying to comply with the open meetings law. Although two members of a governmental body larger than four members may discuss the body's business without violating the open meetings law, features like "forward" and "reply to all" common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Moreover, because of electronic mail communication, it is quite possible that a quorum of a governmental body may receive the sender's message – and therefore may receive information on a subject within the body's jurisdiction – in an almost real-time basis, the way they would receive it in a meeting of the body. Because of the dangers posed by electronic mail, the Attorney General strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority.
 - **Negative Quorums:** When a governmental body operates under a super majority rule (a two-thirds majority, for example), less than half of the members of the body could block a proposal by agreeing to vote in opposition to the proposal. A group of sufficient size to block a proposal is called a "negative quorum." Showers made clear that the open meetings law applies when such a group gathers for the purpose of conducting governmental business.

ⁱ Adapted from State of WI Legislative Council Staff, Information Memorandum 99-3, August 19, 1999 – www.legis.state.wi.us/lc and "Wisconsin Open Meeting Law: A Compliance Guide." State of Wisconsin Department of Justice - http://www.doj.state.wi.us/dls/docs/op_rec.pdf