

## Public Records

Compiled by Alexis Ernst-Treutel, December 2013

[www.legis.wisconsin.gov/lrb/pubs/tapthepower.htm](http://www.legis.wisconsin.gov/lrb/pubs/tapthepower.htm)

In simple terms, public records are materials produced by a government entity. The types of public records are as varied as the reasons that people may seek access to them. There are many considerations when discussing public records and these evolve with the adoption of new technologies and means of communication. Retention, accessibility, definitions of public records, devices, public versus private, and methods of communication are all topics related to public records that are discussed today.

- Brown, Chadwick. "Public Records and Personal Electronic Devices." *Information Memorandum*. Madison, WI: Wisconsin Legislative Council, January 2011. (LegisCl/2011-2013/i) (Library use only) [http://legis.wisconsin.gov/lc/publications/im/IM2011\\_01.pdf](http://legis.wisconsin.gov/lc/publications/im/IM2011_01.pdf).
- Custodian of Records for the Legislative Technology Services Bureau v. State*, 2004 WI 65, 272 Wis. 2d 208, 680 N.W.2d 792, amended, 2004 WI 149, 277 Wis. 2d 75, 689 N.W.2d 908. (321.3/W7a/pt.1-3) <http://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=16693>.  
In 2001 during a John Doe investigation "electronic communications" stored by the Legislative Technology Services Bureau (LTSB) were subpoenaed. Mark Wahl, director of LTSB, challenged the subpoena in part on the grounds that the documents requested were privileged. The LRB library has documents related to the Wisconsin Supreme Court case including the opinion. The court's subsequent emendation of the opinion and denial of the motion for reconsideration can be found at the link listed above.
- Dickerson, Nathan. "Case Study: North Carolina Archives Social Media to Comply with Public Records Law." *Capitol Research*. Lexington, KY: Council of State Governments, July 2012. (025.8/C83) [http://knowledgecenter.csg.org/drupal/system/files/cr\\_socialmediaarchive.pdf](http://knowledgecenter.csg.org/drupal/system/files/cr_socialmediaarchive.pdf).
- Dickerson, Nathan. "Electronic Communications and Public Records." *Capitol Research*. Lexington, KY: Council of State Governments, February 2012. (028.3/C83a) <http://knowledgecenter.csg.org/drupal/content/electronic-communications-and-public-records-0>.
- Farley, Jessica L. "Wisconsin Open Records Law After WIREdata: Still Viable to Protect Public Access to Information?" *Marquette Law Review* 93, no. 3 (Spring 2010): 1189-1215. (328/M34) <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4975&context=mulr>.  
An analysis of accessibility of public records outsourced to a private entity.
- Freeburg, Philip. "Wisconsin Public Records Law." *Fact Sheet* no. 7. Madison, WI: Local Government Center, University of Wisconsin-Extension, Revised August 2012. <http://lgc.uwex.edu/program/pdf/Fact%20Sheet%2007%20-%20Wisconsin%20Public%20Records%20Law.pdf>.  
Topics covered in this guide include: definition of terms, request processes and advice, examples of access limitations, and enforcement.
- Greenberg, Pam. *Preserving Legislative Digital Records*. Denver, CO: National Conference of State Legislatures, March 2010. <http://www.ncsl.org/research/telecommunications-and-information-technology/preserving-legislative-digital-records.aspx>.
- Greenberg, Pam. "The Private Life of E-Mail: The Digital Age Has Complicated the Definition of What's a Public Document." *State Legislatures* 36, no. 1 (January 2010): 20-23. (328.11/N214) <http://www.ncsl.org/research/telecommunications-and-information-technology/the-private-life-of-e-mail.aspx>.  
A discussion of balancing privacy with open government. With regard to state legislators, what communication is considered private versus public record.
- Lathrop, Daniel, and Laurel Ruma, eds. *Open Government: Collaboration, Transparency, and Participation in Practice*. Sebastopol: CA, O'Reilly Media, Inc., 2010. (028.3/L34)  
"In this book, leading visionaries and practitioners both inside and outside of government share their ideas on how to achieve and direct this emerging world of online collaboration, transparency, and participation." (back cover)
- Melvin, Valerie C. *Information Management – The Challenges of Managing Electronic Records: Testimony Before the Subcommittee on Information Policy, Census and National Archives, Committee on Oversight and Government Reform, House of Representatives*. GAO-10-838T. Washington, DC: U.S. Government Accountability Office, June 17, 2010. <http://www.gao.gov/assets/130/124883.pdf>.
- Munson, Sean A., et al. "Sunlight or Sunburn: A Survey of Attitudes Toward Online Availability of US Public Records." *Information Polity: The International Journal of Government & Democracy in the Information Age* 17, no. 2 (March 2012): 99-114. Available full text through [www.badgerlink.net](http://www.badgerlink.net).  
This study surveyed "residents of the US Pacific Northwest on their awareness of and attitudes towards online access to political campaign records and real estate transaction histories." (from abstract)
- Pastika, Terry. *Accessing Government: How Difficult Is It? An Analysis of Open Government Laws in the Midwest*. Elmhurst, IL: Citizen Advocacy Center, 2008. (321.3/C49) [http://www.midwestdemocracynetwork.org/files/pdf/CAC\\_GovReports\\_Full\\_Digital.pdf](http://www.midwestdemocracynetwork.org/files/pdf/CAC_GovReports_Full_Digital.pdf).  
An analysis of the strength and weaknesses of the open records and open meetings laws of Illinois, Michigan, Minnesota, Ohio and Wisconsin.

# Public Records

## Continued

Sankey, Michael L., and Cynthia Hetherington. *The Manual to Online Public Records: The Researchers Tool to Online Resources of Public Records and Public Information*. 3<sup>rd</sup> ed. Tempe, AZ: BRB Publications, Inc. 2013. (Ref./025.8/Sa5) (Library use only)

In addition to describing and listing public information web sites, this book lays out search strategies for using them. Also includes an extensive state by state profile of state agencies, courts, assessors and recorders.

Schmidt, Dan. "Open Records Law." In *Wisconsin Legislator Briefing Book 2013-14*. Madison, WI: Wisconsin Legislative Council, November 2012. (LegisCl/2013-2015/w) (Library use only) [http://legis.wisconsin.gov/lc/publications/briefingbook/ch07\\_open\\_records.pdf](http://legis.wisconsin.gov/lc/publications/briefingbook/ch07_open_records.pdf).

This chapter is a guide for legislators on how respond to open records requests.

Shepard, Jason. *2008 Wisconsin Public Records Audit: Final Report*. Madison, WI: Wisconsin Freedom of Information Council, University of Wisconsin-Madison, School of Journalism and Mass Communication, 2008. (321.3/W751) <http://www.jasonmshepard.com/audit/>.

A report on the accessibility of public records at the local level. Requests for school board, county sheriff's office, city police department, township and city mayor records were studied.

Solove, Daniel J. "Access and Aggregation: Public Records, Privacy, and the Constitution." *Minnesota Law Review* 86, no. 6 (2002): 1137-1209. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=283924](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=283924).

An in-depth discussion on the history of public records and regulation, the redefining of privacy, and constitutional issues.

Strout, Erin. "The Risks of Sunshine." *Chronicle of Higher Education* 51, no. 47 (July 29, 2005): A27-A29. Available full text through [www.badgerlink.net](http://www.badgerlink.net).

"This article reports that some college-related foundations in the U.S. are under pressure to open their books to review the list of donations received by the colleges." (from abstract)

Swank, Melanie R. *The Wisconsin Public Records and Open Meetings Handbook*. 4<sup>th</sup> ed. Madison, WI: State Bar of Wisconsin CLE Books, 2009. (Ref. Desk/321.3/W75/2009) (Library use only)

Van Hollen, J.B. *Wisconsin Public Records Law: Compliance Outline*. Madison, WI: Wisconsin Department of Justice, September 2012. <http://www.doj.state.wi.us/sites/default/files/dls/public-records-compliance-outline-2012.pdf>.

Winn, Peter A. "Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information." *Washington Law Review* 79, no. 1 (February 2004): 307-329. <http://projects.ischool.washington.edu/lawsymposium/docs/winnp.pdf>.

## Related Web Sites

Library of Congress. "Preserving State Government Information." Accessed November 14, 2013. <http://www.digitalpreservation.gov/partners/states.html>.

"This initiative focused on capturing, preserving, and providing access to a rich variety of state and local government digital information."

National Center for State Courts. *Privacy/Public Access to Court Records*. Accessed November 6, 2013. <http://www.ncsc.org/Topics/Access-and-Fairness/Privacy-Public-Access-to-Court-Records/Resource-Guide.aspx>.

Asks for a password but it is not necessary.

Privacy Rights Clearinghouse. *Public Records and Info Brokers*. Accessed November 6, 2013. <https://www.privacyrights.org/Public-Records-and-Info-Brokers>.

Links to articles, fact sheets, speeches and testimony.

Reporters Committee for Freedom of the Press. "Open Government Guide." Accessed October 30, 2013. <http://www.rcfp.org/open-government-guide>.

The guide contains state by state information on open records law.

State of Wisconsin. *Public Notices*. Accessed November 18, 2013. <http://publicnotices.wi.gov/>.

Contains certain procurements, press releases, meeting notices and meeting minutes.

United States Department of Justice.

- *Office of Justice Programs*. "(FOIA) Freedom of Information Act." Accessed November 14, 2013. <http://www.foia.gov/index.html>.

- "Freedom of Information Act Guide," May 2004. Accessed November 14, 2013. <http://www.justice.gov/oip/basicreferences.htm>.

Wisconsin Court System. *Circuit Court Access*. "Director of State Courts Policy on Disclosure of Public Information Over the Internet." Accessed November 14, 2013. <http://wcca.wicourts.gov/AB0304.xsl;jsessionid=5AE7A90192C1FCFD7DD7ECB0D1AACB15.render6>.

Wisconsin Department of Agriculture, Trade and Consumer Protection. *Office of Privacy Protection*. Accessed November 15, 2013. [http://datcp.wi.gov/Consumer/Office\\_of\\_Privacy\\_Protection/Privacy\\_Laws/index.aspx](http://datcp.wi.gov/Consumer/Office_of_Privacy_Protection/Privacy_Laws/index.aspx).

Includes a link to "Government Records Privacy (state and local)".

Wisconsin Department of Justice, Division of Legal Services. "Open Government." Accessed November 1, 2013. <http://www.doj.state.wi.us/dls/open-government>.

Wisconsin Freedom of Information Council. Accessed October 30, 2013. <http://www.wisfoic.org/>.

Wisconsin Public Records Board. Accessed November 6, 2013. <http://publicrecordsboard.wi.gov/>.

## Legislative Reference Bureau

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