

CHAPTER 2
PUBLIC RECORDS

- 2.01 Definitions
- 2.02 Duty to Maintain Records
- 2.03 Legal Custodians
- 2.04 Public Access to Records; Fees
- 2.05 Access Procedures
- 2.06 Limitations on Right to Access
- 2.07 Destruction of Obsolete Records
- 2.08 Confidentiality of Assessor's Records

2.01 DEFINITIONS.

(1) PUBLIC BODY. Any Town entity having custody of a Town record, i.e., an office, elected official, agency, board, commission, committee, council, department or public body corporate and politically created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

(2) CUSTODIAN. That officer, department head, division head or employee of the Town designated under sub. (3) below or otherwise responsible by law to keep and preserve any Town record or file, deposit or keep such records in his/her office, or is lawfully in possession or entitled to possession of such public records and who is required by this section to respond to requests for access to such records.

(3) RECORD. 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), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of the person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his/her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

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2.02 DUTY TO MAINTAIN RECORDS.

(1) Except as provided under sub. (7) below, each officer and employee of the Town shall safely keep and preserve all records received from his/her predecessor or other persons and required by law to be filed, deposited or kept in his/her office or which are in the lawful possession or control of which he/she may be lawfully entitled as such officer or employee.

(2) Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his/her successor all records then in his/her custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the Town Clerk. If a

vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted by the Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

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2.03 LEGAL CUSTODIANS.

(1) CUSTODIANS. Each elected official is the legal custodian of his/her records and the records of his/her office, but the official may designate an employee of his/her staff to act as the legal custodian.

(2) CLERK AS CUSTODIAN. Unless otherwise prohibited by law, the Town Clerk shall act as legal custodian for the Town Board and for any committees, commissions, boards or other authorities created by ordinance or resolution of the Town Board, or, in his/her absence or disability, or in case of vacancy, the Town Treasurer is hereby designated the legal custodian of all Town records.

(3) OTHER CUSTODIANS. For every authority not specified in pars. (a) or (b) above, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his/her staff to act as the legal custodian.

(4) DESIGNATION OF CUSTODIAN. Each legal custodian shall name a person to act as legal custodian in his/her absence or the absence of his/her designee.

(5) POWERS OF CUSTODIAN. The legal custodian shall have full legal power to render decisions and to carry out the duties of an authority under Ch. 19, Subch. II. Wis. Stats., and this section. The designation of the legal custodian does not affect the powers and duties of an authority under this section.

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2.04 PUBLIC ACCESS TO RECORDS; FEES.

(1) ACCESS TO RECORDS. Except as provided in sub. (6) below, any person has a right to inspect a record and to make or receive a copy of any record, as provided in Sec. 19.35(1), Wis, Stats.

(2) AVAILABILITY OF RECORDS. Records shall be available for inspection and copying during all regular business hours.

(3) USE OF FACILITIES. A requester shall be permitted to use facilities comparable to those available to Town employees to inspect, copy or abstract a record.

(4) RESTRICTIONS. The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(5) FEES. A requester shall be charged a fee to defray the cost of locating and copying records, as follows:

- a. The cost of photocopying shall be \$.25 per page. Said cost has been calculated not to exceed the actual, necessary and direct cost of reproduction.
- b. If the form of a written record does not permit copying, the actual and necessary cost of photocopying and photographic processing shall be charged.
- c. The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audio or video tapes, shall be charged.
- d. If mailing or shipping is necessary, the actual cost thereof shall also be charged.
- e. There shall be no charge for locating a record unless the actual cost thereof exceeds \$50.00, in which case the actual cost shall be determined by the legal custodian and billed to the requester.
- f. The legal custodian shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment if such estimate exceeds \$5.00.
- g. Elected and appointed officials of the Town shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.
- h. The legal custodian may provide copies of a record without charge or at a reduced charge where he/she determines that waiver or reduction of the fee is in the public interest.

(6) NOTICE REQUIRED. Pursuant to Sec. 19.34, Wis. Stats., and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. Each authority shall also prominently display at his/her offices, for the guidance of the public, a copy of subs. (d) and (f) of this section. This paragraph does not apply to members of the Town Board.

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2.05 ACCESS PROCEDURES.

(1) PROCEDURES GENERALLY. A request to inspect or copy a record shall be made to the legal custodian. A request shall be 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. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Sec. 19.37, Wis. Stats. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail unless prepayment of the fee is required under sub. (d)(5)(f) above. A requester 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.

(2) DUTY OF CUSTODIAN. Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request, in whole or in part, and the reasons therefor. If the legal custodian, after conferring with the Town Attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his/her request in a manner which would permit reasonable compliance.

(3) LIMITATIONS. A request for a record may be denied as provided in 2.06 below. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within five (5) business days of the oral denial. If a written request is

denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that the request for the record was made in writing, that the determination is subject to review upon petition for a writ of mandamus under Sec. 19.37(1), Wis. Stats., or upon application to the Attorney General or a district attorney.

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2.06 LIMITATIONS ON RIGHT TO ACCESS.

(1) EXEMPTION. As provided by Sec. 19.36, Wis. Stats., the following records are exempt from inspection under this section:

(a) Records specifically exempted from disclosure by State or Federal law or authorized to be exempted from disclosure by State law.

(b) Any record relating to investigative information obtained for law enforcement purposes if Federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition of receipt of aids by the State.

(c) Computer programs, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection.

(d) A record, or any portion of a record, containing information qualifying as a common law trade secret.

(2) LIBRARY RECORDS. As provided by Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this section.

(3) LIMITATIONS ON ACCESS. In responding to a request for inspection or copying of a legal record which is not specifically exempt from disclosure, the legal custodian, after conferring with the Town Attorney, may deny the request, in whole or in part, only if he/she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:

(a) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.

(b) Records of current deliberation after a quasi-judicial hearing.

(c) Records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance or discipline of any Town officer or employee, or the investigation of charges against a Town officer or employee, unless such officer or employee consents to such disclosure.

(d) Records concerning current strategy for crime detection or prevention.

(e) Records of current deliberations or negotiations on the purchase of Town property, investing of Town funds or other Town business whenever competitive or bargaining reasons require nondisclosure.

(f) Financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.

(g) Communications between legal counsel for the Town and any officer, agent or employee of the Town when advice is being rendered concerning strategy with respect to current litigation in which the Town or any of its officers, agents or employees is, or is likely, to become involved, or communications which are privileged under Sec. 905.03, Wis. Stats.

(h) Materials deemed confidential in proceedings in connection with a request for an ethics opinion.

(4) PARTIALLY EXEMPT RECORDS. If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the Town Attorney prior to releasing any such record and shall follow the guidance of the Town Attorney when separating out the exempt material. If, in the judgment of the custodian and the Town Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

2.07 DESTRUCTION OF OBSOLETE RECORDS.

(1) FINANCIAL RECORDS. Town officers are empowered to destroy the following records under their jurisdiction after the completion of an audit by the Department of State Audit or an auditor licensed under Ch. 442, Wis. Stats., but not less than seven (7) years after payment or receipt of the sum involved in the applicable transaction:

- (a) Bank statements, deposit books, slips and stubs.
- (b) Bonds and coupons after maturity.
- (c) Canceled checks, duplicates and check stubs.
- (d) License and permit applications, stubs, and duplicates.
- (e) Payrolls and other time and employment records of personnel included under Wisconsin Retirement Fund.
- (f) Receipt forms.
- (g) Special assessment records.
- (h) Vouchers, requisitions, purchase orders and all other supporting documents pertaining thereto.

(2) OTHER RECORDS. Town officers are empowered to destroy the following records, but not less than seven (7) years after the records were effective.

- (a) Assessment rolls and related records, including Board of Review minutes.
- (b) Contracts and papers relating thereto.
- (c) Correspondence and communications.
- (d) Financial reports other than annual financial reports.
- (e) Insurance policies.
- (f) Justice dockets.
- (g) Oaths of office.
- (h) Reports of boards, commissions, committees and officials duplicated in the official Town Board minutes.
- (i) Resolutions and petitions.
- (j) Voter record cards.

(3) NOTICE REQUIRED. Prior to the destruction of any public record described above, at least 60 days notice shall be given the State Historical Society, as provided pursuant to Sec. 19.21(4) (a).

(4) TAPED RECORDS OF MEETINGS. Any tape recordings of governmental meeting of the Town of Delavan may be destroyed, erased or reused no sooner than ninety (90) days after the minutes of the meeting have been approved, if the purpose of the recording was to make minutes of the meeting.

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2.08 CONFIDENTIALITY OF ASSESSOR'S RECORDS.

(1) Whenever the Assessor, in the performance of the Assessor's duties, requests or obtain income and expense information pursuant to Section 70.07(7)(af), Wisconsin Statutes, or any successor statute thereto, then, such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential bases, except, however, that the information may be revealed to and used by persons: in the discharging of duties imposed by law; in the discharge of duties imposed by office (including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and use by the Board of Review in performance of its official duties); or pursuant to order of a court. Income and expense information provided to the Assessor under Section 70.47(7)(af), unless a court determines that it is inaccurate, as per Section 70.47(7)(af), is subject to the right of inspection and copying under Section 19.35(1), Wisconsin Statutes.

(2) The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof in the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

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