



Office of Compliance
UNIVERSITY OF WISCONSIN-MADISON

Public Records Guidelines for Employees

Frequently Asked Questions Addressed in these Guidelines:

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1. What is the Wisconsin Public Records Law?

The Wisconsin Public Records Law, Wis. Stats. [§19.31-19.39](#), is intended to ensure that state agencies and institutions, including the University of Wisconsin-Madison, are transparent to the public by granting a right of access to records. Public records laws are also called sunshine laws – they allow citizens to shed light on the workings of their government.

Wisconsin's Public Records Law 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.

2. Does the public records law apply to UW-Madison and its employees?

Yes. The Wisconsin Public Records Law applies to government authorities and records created or maintained by those authorities, including those created or maintained by employees. UW-Madison is a state agency and therefore subject to the Wisconsin Public Records Law. This law applies to every UW-Madison employee, regardless of classification.

3. Why do I need to know about the Wisconsin Public Records Law?

As a university employee, you create public records in the course of your work. It's important that you understand your obligations under the law in the event there is a public records request for records in your possession.

4. Who can make a public records request?

Generally, any person can request to inspect or copy a record. Requesters may be anonymous, and they are not required to identify the reason for their request.

5. How can a public records request be made to UW-Madison?

All public records requests should be submitted through the [UW-Madison Public Records Portal](#).

6. Who is responsible for responding to public records requests received at UW-Madison?

UW-Madison's Public Records Custodians in the Office of Compliance ("OC") are principally responsible for responding to public records requests submitted to the University. The records custodians are specifically trained to manage the requests consistent with the legal requirements of the Public Records Law which demand specific information be included when responding to these requests.

Employees are responsible for cooperating with the record custodians to assist with searching for and collecting records.

7. What are the Public Records Custodians' responsibilities?

It is the responsibility of the records custodians to:

- Evaluate the request.
- Locate all records that are responsive to the request.
- Review and remove information that is protected from disclosure under the law.
- Respond to the request and tell the requester what is being withheld.
- Provide the requester with regular updates on the status of the request.

8. What is a record under the Wisconsin Public Records Law?

In general, a record is broadly defined to include almost all information existing in a tangible medium maintained by UW-Madison. This term also includes electronic records. Examples: emails, photos, videos, audio files, meeting minutes, reports, spreadsheets, database content, instant messages, text messages, and virtual workplace chat content, channel discussion, and files including MS Team, Zoom, Webex chats or recordings, etc.

9. Can employees request copies of their own records?

Yes. UW-Madison employees have the right to inspect and receive copies of personnel documents in their personnel file upon request. While employees can request copies of their own records through the public records portal, it is recommended that they consider requesting access through their supervisor, divisional Human Resources Office, or UW-Madison's Office of Workforce Relations, wr@ohr.wisc.edu. There is also a right to obtain records containing personally identifiable information about the requester himself or herself that is not necessarily in a personnel file under Wis. Stat. § 19.35(1)(am).

10. Does it matter if the records are stored on my personal devices or accounts?

No. The location of the record does not matter – the content determines if it's a public record. Records, including emails, text messages, or files about UW-Madison business, which are on your personal device are still public records. You must keep them and turn them over upon request.

11. What are some tips when using personal devices to conduct UW-Madison business?

Since the location of a record is irrelevant, it is especially important to be mindful when using your personal device to conduct university business. Remember, if the e-mail, text, instant message, chat, post, or file is about UW-Madison business, then it is a record that may be subject to disclosure under the Wisconsin Public Records Law - even if it is created or maintained on a personal device, saved on a home computer, or saved in the cloud. Keep the following considerations in mind when using a personal device for UW-Madison business:

- A personal device may be a computer, mobile phone, tablet, Kindle, iPad, smartwatch, or other connected device such as a cloud back-up, flash-drive, or external hard drive.
- Any e-mail used to conduct government business is a record that may be subject to disclosure under the Wisconsin Public Records Law, even if it is sent or received by an employee's personal e-mail account.
- You must ensure any records are properly retained if you transition to a new device.

12. What is not a record under the Wisconsin Public Records Law?

Generally excluded from the definition of records are drafts, notes, preliminary documents, and items prepared for personal use. But these exclusions are supposed to be narrowly construed under the law.

13. What if the requested record does not exist?

Generally, only records that exist at the time of the request must be produced. You are not required to create a new record to respond to a public records request. If there are no responsive records, the public record custodian will inform the requester of that.

14. What records are exempt from disclosure under the Wisconsin Public Records Law?

Common exceptions to disclosure allowed by law include:

- Documents protected by Attorney/Client privilege.
- FERPA protected student records and personally identifiable information contained in student records.
- Trade secrets.
- Patient health care records.
- Information maintained, prepared, or provided by an employer concerning the home address, home email address, home telephone number, or social security number of an employee.
- Information related to a current investigation of possible employee criminal conduct or misconduct connected to employment prior to the disposition of the investigation (time-limited protection while investigation is ongoing).
- Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.
- Identities of applicants for most university positions where individuals have requested confidentiality.
- Records where the public interest in nondisclosure of the record outweighs the public interest in disclosure ("the balancing test"). If the custodian decides that a record should be released but for the fact that it contains some non-disclosable information, the custodian must delete (redact) the non-disclosable portions of the record.

15. How long do I have to keep records?

Records must be kept as long as required by the applicable UW-Madison [retention schedule](#), except when a request for records is received. Requested records may not be destroyed under a retention schedule until after the request is granted or until at least 60 days after the date that the request is denied.

If you have questions about UW-Madison's retention schedule, please check with [University Archives and Records Management Services](#) to find out how long you are required to keep your records and where to send them when that time runs out.

16. What should I do if I receive a public records request?

If you are contacted by someone seeking records under the Public Records Law, you should either direct that person to submit the request through the UW-Madison [Public Records Portal](#) or forward the request (or requester) directly to the UW-Madison's Public Records Custodians at public_records@wisc.edu. 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.

If you receive notice that a requester has requested records, you are required to maintain the responsive records and are prohibited from destroying the records.

17. How quickly does UW-Madison have to respond to a request?

The Public Records Law requires a request be answered "as soon as is practicable and without delay." It's very important that any university employee who receives a public records request notify the Public Records Office as soon as possible so that a communication back to the requester confirming receipt of the request can occur within ten (10) business days of the request.

Every request gets an answer.

18. What can happen if the University doesn't respond appropriately to a request?

If the University withholds a record or part of a record, or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may: (1) Bring an action for mandamus asking a court to order release of the record; or (2) Submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that an action for mandamus be brought asking the court to order release of the record to the requester.

Punitive damages may be awarded to a requester if the court finds that the University arbitrarily or capriciously denied or delayed response. This includes attorneys' fees, damages of not less than \$100.00, and other actual costs. Additionally, a civil forfeiture of not more than \$1,000.00 may be imposed against the University.

19. Who should University units contact for assistance?

If you have further questions about the Public Records Law, contact UW-Madison's Assistant Public Records Custodian, Elizabeth Wilkerson elizabeth.wilkerson@wisc.edu or 608-265-9045.

20. Are there any resources available to help me understand public records law better?

Yes. The Public Records Custodians in the Office of Compliance and attorneys in the Office of Legal Affairs provide public records information presentations upon request.