

Chapter 2.36

PUBLIC RECORDS

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2.36.010 Definitions.

As used in this chapter:

“Authority” means any of the following town entities having custody of a town record: an office, elected official, court, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

“Custodian” means that officer, department head, division head or employee of the town designated under Section 2.36.030 or otherwise responsible by law to keep and preserve any town records or file, deposit or keep such records in his or 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.

“Record” means 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. 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 a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or 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. (Editorially amended during 2001 codification: prior code § 1.30)

2.36.020 Duty to maintain records.

A. Except as provided under Section 2.36.070, each officer and employee of the town shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.

B. 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 or her successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee who shall file such receipt with the town clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the clerk on behalf of the successor, to be delivered to such successor upon the latter’s receipt. (Prior code § 1.31)

2.36.030 Legal custodians.

A. Each elected official is the legal custodian of his or her records and the

records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

B. Unless otherwise prohibited by law, the town clerk or the clerk's designee 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.

C. For every authority not specified in Section 2.36.010 or 2.36.020, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian.

D. Each legal custodian shall name a person to act as legal custodian in his or her absence or the absence of his or her designee.

E. No legal custodian or other official of the town shall permit any person to remove any of the records from the Town Hall without the express written consent of the town board. This provision shall not, however, prevent the legal custodian from removing the record from the Town Hall solely for the purpose of copying or reproducing the record. (Ord. dated 7/8/91; prior code § 1.32)

2.36.040 Public access to records.

A. Except as provided in Section 2.36.060, any person has a right to inspect a record and to make or receive a copy of any record as provided in § 19.35(1), Wis. Stats.

B. Records will be available for inspection and copying during all regular office hours.

C. A requester shall be permitted to use facilities comparable to those available to town employees to inspect, copy or abstract a record.

D. 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.

E. A requester shall be charged a fee to defray the cost of locating and copying records as follows:

1. The cost of photocopying shall be twenty-five cents (\$0.25) per page. Such cost has been calculated not to exceed the actual, necessary and direct cost of reproduction.

2. If the form of a written record does not permit copying, the actual and necessary cost of photographing and photographic processing shall be charged.

3. The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audiotapes or videotapes, shall be charged.

4. If mailing or shipping is necessary, the actual cost thereof shall also be charged.

5. The Town may also charge for the cost of locating and/or compiling records pursuant to a request, in an amount not to exceed the actual, necessary and direct cost of location and compilation, if such cost exceeds \$50.00. The fee shall be based on the employee's hourly rate, but in no circumstances less than \$15.00 per hour. (Ord. dated 10/22/09)

6. 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 five dollars (\$5.00).

7. 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.

8. The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public interest.

9. The cost of computer-generated printing specifically of real estate tax and assessment information shall be as established by resolution of the town board.

10. If the request is for electronic records, such as e-mails, and the request is for such documents in electronic format, the fee for locating and forwarding such documentation shall be at the rate of pay the town official responding to the request, unless such official is not paid on an hourly basis, in which case the fee shall be \$15.00 per hour. (Ord. dated 10/22/09)

F. Pursuant to Section 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 its offices, for the guidance of the public, a copy of Sections 19.31 to 19.39, Wis. Stats. This subsection does not apply to members of the town board. (Ord. dated 10/10/02; prior code § 1.33)

2.36.050 Access procedures.

A. 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 shall be in writing before an action to enforce the request is commenced under Section 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 a fee is required under Section 2.36.040(F)(6) of this chapter. 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.

B. 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 or her request in a manner which would permit reasonable compliance.

C. A request for a record may be denied as provided in Section 2.36.060. 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 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 if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Section 19.37(1), Wis. Stats., or upon application to the Attorney General or a district attorney. (Prior code § 1.34)

2.36.060 Limitations on right to access.

A. As provided by Section 19.36, Wis. Stats., the following records are exempt from inspection under this chapter:

1. Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law;

2. 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 to receipt of aids by the state;

3. 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;

4. A record or any portion of a record containing information qualifying as a common law trade secret.

B. As provided by Section 43.30, Wis. Stats., public library circulation records are exempt from inspection under this chapter.

C. In responding to a request for inspection or copying of a 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 or 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:

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

2. Records of current deliberations after a quasi-judicial hearing;

3. Records of current deliberations regarding any town officer or employee concerning employment, promotion, demotion, discipline, performance, compensation, dismissal or the investigation of charges against a town officer or

employee, unless such officer or employee consents to such disclosure;

4. Records concerning current strategy for crime detection or prevention;

5. 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;

6. 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;

7. 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 Section 905.03, Wis. Stats.

D. 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. (Prior code § 1.35)

2.36.070 Destruction of records.

A. Town officers may destroy the following non-utility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Chapter 442, Wis. Stats., but not less than seven years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the State Public Records Board pursuant to Section 16.61(3)(e), Wis. Stats., and then after such shorter period:

1. Bank statements;
2. Cancelled checks;
3. Receipt forms;
4. Vouchers.

B. Town officers may destroy the following utility records of which they are the legal custodians and which are considered obsolete after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Chapter 442, Wis. Stats., subject to State Public Service Commission regulations, but not less than seven years after the record was effective unless a shorter period has been fixed by the State Public Records Board pursuant to Section 16.61(3)(e), Wis. Stats., and then after such a shorter period, except that sewer and water stubs, receipts of current billings and customers' ledgers may be destroyed after two years:

1. Contracts;
2. Excavation permits;
3. Inspection records.

C. Town officers may destroy the following records of which they are the legal custodian and which are considered obsolete, but not less than seven years after the record was effective unless another period has been set by statute, and then after such a period, or unless a shorter period has been fixed by the State Public Records Board pursuant to Section 16.61(3)(e), Wis. Stats., and then after such a shorter period:

1. Old insurance policies;
2. Election notices;
3. Canceled registration cards.

D. Unless notice is waived by the State Historical Society, at least sixty (60) days' notice shall be given the State Historical Society prior to the destruction of any record as provided by Section 19.21(4) (a), Wis. Stats.

E. Any tape recordings of a governmental meeting of the town may be destroyed, erased or reused no sooner than ninety (90) days after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting. (Prior code § 1.36)