

**STATE OF WISCONSIN
VILLAGE OF MENOMONEE FALLS
WAUKESHA COUNTY, WISCONSIN
PUBLIC RECORDS POLICY**

1. INTRODUCTION

In the State of Wisconsin, access to governmental records is governed by Subchapter II of Chapter 19 of the Wisconsin Statutes. Pursuant to Wis. Stat. §19.34 the following shall constitute the Public Records Policy for the Village of Menomonee Falls under which the public may request information and access to public records, make requests for records, obtain copies of records, and learn the costs involved in such requests.

2. RECORDS CUSTODIANS

a. Designated Custodians of Village Records

- (i) The Village Clerk shall be the custodian of the records of the Village Board of Trustees, of all committees and commissions of the Village, and of all Village records for which no other custodian has been designated.
- (ii) Elected Village officials shall be the custodians of the individual records of their respective offices
- (iii) The Municipal Judge shall be the custodian of the records of the Menomonee Falls Municipal Court.
- (iv) The following appointed officials shall be the custodians of the individual records of their respective offices:
 - (a) Village Manager
 - (b) Village Clerk
 - (c) Village Treasurer
 - (d) Village Attorney
 - (e) Village Assessor
- (v) The Police Chief or the Chief's designee shall be the custodian of the records of the Menomonee Falls Police Department, including department press releases and the status of police investigations.

- (vi) The Fire Chief or the Chief's designee shall be the custodian of the records of the Menomonee Falls Fire Department, including department press releases and the status of fire investigations.
- (vii) The Managers of the following Village Departments shall be the custodians for the records of their Departments:
 - (a) Community Development, Planning and Zoning;
 - (b) Information Technology/Communication and Information Services;
 - (c) Engineering Services;
 - (d) Financial Services;
 - (e) Public Works; and
 - (f) Utilities.
- (viii) Custodians of Particular Types of Records
 - (a) The Library Board or the Library Board's designee shall be the custodian of the records of the Menomonee Falls Public Library.
 - (b) The Village Attorney shall also be the custodian of the records of all legal proceedings involving the Village other than those proceedings that are the records of the Municipal Court.
 - (c) The Human Resources Coordinator shall also be the custodian of the records for all personnel files and policies.
 - (d) The Director of Community Development, Planning and Zoning shall also be the custodian of the Building Inspection records.
 - (e) The Village Manager shall also be the custodian of the following records:
 - (1) All records related to labor negotiations;
 - (2) General press releases; and
 - (3) Redevelopment records related to the function of the Executive Director of the Community Development Authority.

b. Duties of the Custodian

- (i) Persons designated as custodians are responsible for keeping and preserving public records until they may be destroyed as provided under Chapter 2, Article V of the Village Code of Ordinances. No record may be destroyed while a request involving that record is pending or anytime within 60 days after a request for the record has been denied (or 90 days if the requester is incarcerated or committed).
- (ii) Custodians shall be responsible for responding to requests from the public for access to records in accordance with this policy as well as applicable State and Federal laws and regulations. Custodians may request assistance from the Village Attorney in responding to any request for access to information or records.

3. RECORDS SUBJECT TO DISCLOSURE.

- a. Records subject to public requests for disclosure are defined in Wis. Stat. §19.32(2), as amended from time-to-time. As of the date of this Policy, the term “record” is defined in Wis. Stat. §19.32(2) to mean:

"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.

- b. The following are generally not a “record” subject to disclosure under Wisconsin Law:

- (i) Drafts that have not circulated beyond the authority (e.g. person, board, or commission) responsible for approving the final work;
- (ii) Personal documents that are maintained solely for the individual’s personal use;
- (iii) Personal notes that are used solely to refresh an individual’s recollection at a later date that have not been shared with any other person or maintained to memorialize actions taken on behalf of the Village;

- (iv) Computer programs and trade secrets;
- (v) Copies of documents received from another agency for purely informational purposes and do not affect the functions of the Village or one of its departments; and
- (vi) Published or copyrighted materials available at the library or available for sale.

4. LIMITATIONS AND PROHIBITIONS ON DISCLOSURE OF INFORMATION AND RECORDS.

- a. All requests for information and records are subject to a determination by the custodian concerning whether the information or record is subject to release under applicable laws as of the time of the request.
- b. The general presumption is that records are open to the public unless there is: (1) a clear statutory exception, (2) a common law limitation, or (3) an overriding public interest in keeping the record confidential. If possible, information or data that cannot be released will be redacted (i.e. “blacked out”) of records and the resulting edited record will be released.
- c. Statutory reasons for denying access to a record include without limitation the following:
 - (i) The record does not exist.
 - (ii) The item requested is not a “record” as defined by the Wisconsin Statutes.
 - (iii) The record is part of a records series, as defined in Wis. Stat. §19.62(7), that is not indexed, arranged, or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.
 - (iv) The record contains “personally identifiable information” (i.e. that can be associated with a particular individual through one or more identifiers or other information or circumstances) that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.
 - (v) The record contains “personally identifiable information” that, if released, would:

- (a) Endanger an individual's life or safety;
 - (b) Identify a confidential informant;
 - (c) Endanger the security, population or staff, of any state prison, jail, secured correctional facility, secured child caring institution, secured group home, mental health institute, center for the developmentally disabled, or facility for the institutional care of sexually violent persons as those facilities are defined by statute; or
 - (d) Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility.
- (vi) The record is a confidential juvenile arrest record for which access is restricted under Wis. Stat. §§938.396 and 48.396. Limited access may be granted in accordance with Wis. Stat. §938.396 and policies adopted by the Police Department.
- d. Where there is no statutory or common-law prohibition on disclosure, the custodian shall conduct a "balancing test", weighing the public's presumed interest in disclosure against the harm to the public, if any, that would result from disclosure.

5. **LIMITATIONS ON DISCLOSURE OF INFORMATION AND RECORDS INVOLVING VILLAGE EMPLOYEES.**

- a. Custodians are responsible for complying with the Wisconsin Statutes placing limitations on disclosure of information pertaining to Village employees and officials.
- b. **Employee Personnel Records, Access Prohibited.** Unless access is specifically authorized or required by statute, a custodian shall not provide access to records containing the following information (except to an employee or the employee's representative to the extent required under Wis. Stat. §103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under Wis. Stat. ch. 111 or pursuant to a collective bargaining agreement under ch. 111):
 - (i) Information maintained, prepared, or provided by the Village concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes granting access to such information.
 - (ii) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation.

- (iii) Information pertaining to an employee's employment examination provided, however, that access to the examination score may be permitted if access to that score is not otherwise prohibited.
- (iv) Information relating to one or more specific employees that is used by the Village 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.
- (v) Employee names/personally identifiable information of a contractor required to pay prevailing wage rate unless otherwise authorized by the specific employee or by state statutes. A custodian may, however, release an employee's work classification, hours, wages, and benefits while working on such a project.

c. Employee Records Requiring Notice and Review Opportunity.

- (i) Under Wis. Stat. §19.356(2), a custodian making a determination to release the following records must give written notice to the subject employee by personal service or certified mail within three (3) days of making that determination:
 - (a) A record containing information relating to an employee that is created or kept by the Village and results from an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the Village.
 - (b) A record obtained by use of a subpoena or search warrant.
 - (c) A record prepared by an employer other than the Village if that record contains information relating to an employee of that employer, unless the employee authorizes the Village to provide access to that information.
- (ii) The written notice must describe the record and explain the employee's rights under Wis. Stat. §§19.356(3) and (4). Employees receiving such notice have five (5) days within which to give the Village notice of intent to seek judicial review of the custodian's decision to disclose the record and ten (10) days within which to initiate an action to block release of the record by the Village. No disclosure of the record may be made pending the employee's response. If an action is commenced, no record may be disclosed unless the court makes a determination permitting disclosure.

6. LOCAL PUBLIC OFFICE HOLDERS, LIMITATIONS ON DISCLOSURE OF INFORMATION AND RECORDS.

a. Pursuant to Wis. Stat. §19.34(1), the following constitute the Local Public Offices for the Village of Menomonee Falls:

- (i) Village President and Members of the Board of Trustees;
- (ii) Village Manager;
- (iii) Village Clerk;
- (iv) Village Treasurer;
- (v) Village Assessor;
- (vi) Village Attorney;
- (vii) Municipal Judge.

b. Local Public Office Holder Records, Access Prohibited.

- (i) Unless access is specifically authorized or required by statute, custodians shall not provide access to records containing information maintained, prepared, or provided by the Village concerning the home address, home electronic mail ("E-mail") address, home telephone number, or social security number of an individual who holds a Local Public Office unless the individual authorizes the Village to provide access to such information. This section does not prohibit release of the home address of the Village President or any Village Trustee.
- (ii) Local Public Office Holders, Notice and Review Opportunity.
 - (a) When a custodian makes a determination to release a record containing information related to a Local Public Office holder, the custodian must, within three (3) days of making such determination and prior to release of the record, give written notice via personal service or certified mail to the Local Public Office holder.
 - (b) The written notice must give notice of the decision to release the record, provide a brief description of the record, and explain that the Local Public Office holder has five (5) days from the receipt of the notice to augment the record to be released with written comments and documentation selected by the Local Public Office holder.

- (c) Except as otherwise authorized or required by statute, the custodian shall release the record as augmented by the Local Public Office Holder.

7. HOURS OF OPERATION.

- a. Except as otherwise noted below, the Village Clerk, appointed Village Officials, the Police Chief and Department Heads other than Building Inspection and the Village Assessor shall maintain regular office hours at the Village Hall at W156 N84880 Pilgrim Road, Menomonee Falls Wisconsin 53051.
- b. Information and access to records for which the Village Clerk is custodian may be requested between 8:00 a.m. and 4:30 p.m. on days when the Village Hall is open for business subject to adjustment for holidays and emergencies.
- c. Requests for records of Building Inspection and the Village Assessor require at least 48 hours written or oral notice of intent to inspect or copy a record. If The Village Assessor's office is closed during normal business hours, requests for records of the Village Assessor may be filed with the Village Clerk.
- d. The Library shall maintain such hours as the Library Board directs.
- e. The Fire Chief shall maintain regular office hours at Fire Station #3, located at W140 N7501 Lilly Road, Menomonee Falls, Wisconsin 53051.

8. FORM OF REQUEST.

- a. **Form of Request.** Requests for access to records may be made in person, by mail, E-mail, or facsimile transmission. No telephonic requests for records will be processed.
- b. **Oral Requests.** In most instances, a request for record(s) or information may be made orally. A request must be in writing, however, before an action to enforce the request may commenced under W is. Stat. §19.37. A requester may remain anonymous however, there are limitations on public records access for incarcerated and committed individuals and concerning juvenile arrest records. 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. Requesters must comply with any regulations or restrictions upon access to or use of information that are specifically prescribed by law. A custodian may also impose reasonable restrictions on the manner of access to an original record that is either irreplaceable or easily damaged.
- c. **Description of Records/Information.** All requests must reasonably describe the record or information requested. If a record does not exist that corresponds to a request, the Village does not have an obligation to create a record. If, however, a record exists that is close to what a requester has asked for, that record should be

considered to be the record that has been requested. Requests for records or information that do not state a reasonable limitation as to subject matter or length of time represented by the record do not constitute a sufficient request.

9. COSTS OF RECORDS.

a. Definitions

- (i) *Direct Cost* shall mean the actual cost of personnel plus all expenses for paper, copier time, depreciation and supplies.
- (ii) *Actual Cost* shall mean the total cost of personnel including wages, fringe benefits and all other benefits and overhead related to the time spent searching or coping records.

b. Reproduction or Copying Charges.

- (i) Photocopies of 8 ½ by 11” records will be provided at \$0.25 per page.
- (ii) Requests for records requiring large-sized copies, color copies, photographic reproductions, video reproductions, or audio recordings will be subject to separate rates reflecting the Village’s actual, necessary, and direct charges of reproduction of such record.
- (iii) Requests for records not falling within paragraphs (i) and (ii) of this subsection will be subject to separate rates reflecting the Village’s actual, necessary, and direct charges of reproduction of such records.

c. Shipping Charges. The actual costs of shipping or mailing will be charged.

d. Location Charges. Whenever the actual, necessary, and direct cost to the Village of locating requested record(s) or information is \$50 or more, the person requesting such record(s) or information will be required to reimburse the Village for such costs as a condition of processing the request. An estimate of such costs will be provided to the requester unless the requester waives this estimate.

e. Advance Payment. Advance payment may be required by the Village whenever the costs of reproduction and/or postage exceed \$5.00 and whenever the cost of locating a record is \$50 or more.

10. CONFLICTS.

In the event of any conflict between this Policy and the Wisconsin Statutes, as amended from time to time, the Wisconsin Statutes shall control.