

## CHAPTER 3

### Public Records

#### SEC. 3-3-1 DEFINITIONS.

- (a) "Authority" means any of the following City entities having custody of a City record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted sub-unit of the foregoing.
- (b) "Custodian" means that officer, department head, division head, or employee of the City designated under Section 3-3-3 or otherwise responsible by law to keep and preserve any City 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.
- (c) "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), 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 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.
- (d) "Direct Cost" means the actual cost of personnel plus all expenses for paper, copier time, depreciation and supplies.
- (e) "Actual Cost" means the total cost of personnel including wages, fringe benefits and all other benefits and overhead related to the time spent in search of records.

#### SEC. 3-3-2 DUTY TO MAINTAIN RECORDS.

- (a) Except as provided under Section 3-3-7, each officer and employee of the City 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 officer 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 said receipt with the City 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.

**SEC. 3-3-3****LEGAL CUSTODIAN(S).**

- (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 the City Clerk to act as the legal custodian.
- (b) Unless provided in this Subsection and Subsection (c), the City Clerk or the Clerk's designee shall act as legal custodian for the Common Council and for any committees, commissions, boards, or other authorities created by ordinance or resolution of the Common Council. The following offices or authorities shall have as a legal custodian of records the individual so named.
  - (1) The Treasurer and Comptroller shall be the authority and custodians of the following:
    - a. Treasurer
      - 1. Investment Records
      - 2. Tax Collection Records
      - 3. City Receipts
      - 4. City Canceled Checks
      - 5. Bank Statements and Bank Reconciliations
      - 6. Bank Deposit Receipts
      - 7. Any other records designated by law to be in the care of the City Treasurer.
    - b. The Comptroller shall be the authority and custodian of all other financial records not enumerated above and of the data processing records of the City of Menasha.
  - (2) The Assessor shall be the authority and custodian for all assessment records of the City.
  - (3) The Director of Public Works shall be the custodian for all records of the Department of Public Works.
  - (4) The Police Chief shall be the authority and custodian for all records in the Police Department of the City.
  - (5) The Fire Chief shall be the authority and custodian for all records in the Fire Department of the City.
  - (6) The Public Health Director shall be the authority and custodian for all non-inspection related health records of the City.
  - (7) The Parks and Recreation Director shall be the authority and the custodian of all records under his jurisdiction in the City.
  - (8) The Librarian shall be the authority and the custodian of all records of the Library Board.
  - (9) The General Manager shall be the custodian of all records of the Menasha Electric and Water Utilities.
  - (10) The Director of Community Development shall be the custodian of all records pertaining to City planning and zoning, building, plumbing, electrical and health inspections and permits, and to the sealer of weights and measures.
- (c) For every authority not specified in Subsections (a) and (b), 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 in the absence of his or her designee, and each legal custodian shall send notice of the designated deputy to the City Clerk.

### **SEC. 3-3-4 PUBLIC ACCESS TO RECORDS.**

- (a) Except as provided in Section 3-3-6 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.
- (b) Records will be available for inspection and copying during all regular office hours.
- (c) If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least forty-eight (48) hours' advance notice of intent to inspect or copy.
- (d) A requester shall be permitted to use facilities comparable to those available to City employees to inspect, copy or abstract a record.
- (e) 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.
- (f) The cost of copying, photographing, processing, shall be a fee set from time to time by the Administration Committee. Nothing in this section shall prevent the Police Department or Fire Department from requesting of the Administration Committee a different fee since more than copying records is involved, such as investigations, traffic accidents, witness statements, etc.
- (g) 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. This Subsection does not apply to members of the Common Council.

### **SEC. 3-3-5 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 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 a fee is required under Section 3-3-4(f)(6). 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 City 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 3-3-6. 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 Sec. 19.37(1), Wis. Stats., or upon application to the attorney general or a district attorney.

### **SEC. 3-3-6                    LIMITATIONS ON RIGHT TO ACCESS.**

- (a) As provided in Sec. 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 and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection; and
  - (4) Pursuant to Sec. 905.08, Wis. Stats., a record or any portion of a record containing information qualifying as a common law trade secret. "Trade secrets" are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes which are used for making, preparing, compounding, treating or processing articles, materials or information which are obtained from a person and which are generally recognized as confidential.
- (b) As provided by Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this Section.
- (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 City 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) Pursuant to Sec. 19.85(1)(a), Wis. Stats., records of current deliberations after a quasi-judicial hearing.
  - (3) Pursuant to Sec. 19.85(1)(b) and (c), Wis. Stats., records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any City officer or employee, or the investigation of charges against a City officer or employee, unless such officer or employee consents to such disclosure.
  - (4) Pursuant to Sec. 19.85(1)(d), Wis. Stats., records concerning current strategy for crime detection or prevention.
  - (5) Pursuant to Sec. 19.85(1)(e), Wis. Stats., records of current deliberations or negotiations on the purchase of City property, investing of City funds, or other City business whenever competitive or bargaining reasons require nondisclosure.
  - (6) Pursuant to Sec. 19.85(1)(f), Wis. Stats., 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) Pursuant to Sec. 19.85(1)(g), Wis. Stats., communications between legal counsel for the City and any officer, agent or employee of the City, when advice is being rendered concerning strategy with respect to current litigation in which the City 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.
  - (8) Pursuant to Sec. 19.85(1)(h), Wis Stats., requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.
- (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 City Attorney prior to releasing any such record and shall follow the guidance of the City Attorney when separating out the exempt material. If, in the judgment of the custodian and the City 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.
- (e) Whenever the assessor, in the performance of his or her duties, requests and obtains income and expense information pursuant to s. 70.47(7)(af), Wis. Stats., or any successor statute, then, such income and expense information that is provided to the assessor shall be held by the assessor on a confidential basis. The assessor may disclose such information in the performance of duties imposed by law and to 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 s. 70.47(7)(af), unless a court determines that it is inaccurate or otherwise orders, is not subject to the right of inspection and copying under s. 19.35(1).

### **SEC 3-3-7 Retention of Public Records**

- (a) General Records Schedule Adopted. The City of Menasha hereby adopts, by reference, the Wisconsin Municipal Records Schedule (hereinafter, "Records Schedule"), pertaining to the retention and destruction of public records, and approved by the State of Wisconsin Public Records Board (hereinafter, "Records Board") on August 27, 2018. A copy of the Records Schedule will be kept on file in the City of Menasha Clerk's office located at 100 Main Street, Suite 200, Menasha, WI 54952 and made available for public viewing Monday through Friday from 8:00 a.m. – 4:00 p.m.
- (b) Other Records. In the event the City of Menasha creates a record not contemplated by the Records Schedule, the City may, subject to the Records Board's prior approval, either adopt an applicable records retention schedule set forth by the Records Board, if available, or create its own retention schedule pertaining to the record.
- (c) Repeal. All ordinances, or portions thereof, and resolutions, or portions thereof, in conflict with any portion of the Records Schedule are hereby repealed. Any approved City of Menasha retention schedule, or portion thereof, for any record not contemplated by the Records Schedule shall remain in full force and effect.
- (d) The following records must be maintained for five years prior to their destruction:
  - (1) Payroll registers/payroll reports, Social Security or retirement earnings statements.
  - (2) Utility usage records for City properties.
  - (3) Performance evaluations.

- (4) Employee medical records.
- (e) The following records must be maintained for seven years prior to their destruction:
  - (1) All other financial records not specified.
  - (2) Bank statements.
  - (3) Bonds and coupons (after maturity).
  - (4) Canceled checks, duplicates, check stubs.
  - (5) Payroll records.
  - (6) Receipt forms.
  - (7) Special assessment records.
  - (8) Vouchers, purchase orders and supporting documents.
  - (10) Contracts.
  - (11) Communications.
  - (12) Insurance policies.
  - (13) Oaths of office.
  - (14) Reports of boards, commissions, committees and officials duplicated in official minutes.
  - (15) Resolutions/petitions.
  - (16) Voter record cards.
  - (17) Other police records unless otherwise specified.
  - (18) Police traffic accident reports.
  - (19) Police telephone line and radio frequency tape recordings, if any.
  - (20) Police radar maintenance reports.
  - (21) Police and fire department daily/weekly/monthly/annual reports.
  - (22) Police ride-along records, and the liability release.
  - (23) Police false alarm records.
  - (24) Police and fire department overtime records.
  - (25) Police and fire department schedules and attendance reports.
  - (26) Police receipt books and cash registers receipt rolls.
  - (27) TIME System criminal history logs.
  - (28) Police and fire department offense/investigation reports (after statute/limitations has expired).
  - (29) Accounts payable/detail listing/check register.
  - (30) Client medical records.
  - (31) Professional consultation records (if not part of client medical records).
  - (32) Legal memos.
  - (33) Claims paid and supporting papers.
  - (34) Ethics statements.
  - (35) Journal entries, journals of proceedings (after publication)
  - (36) Trust account records.
  - (37) Certified special assessment roll (after assessment is collected).
  - (38) Accounts of City and books of account.
  - (39) Tax receipts.
  - (40) Time cards, attendance records, salary schedules.
  - (41) Garnishment, wage assignment records.
  - (42) Department training records.
  - (43) General ledger, trial balance.
  - (44) All other non-specified records.
  - (45) Fire incident reports.

- (46) Fire inspection reports.
- (47) Underground tank inspection reports.
- (48) Inventory records. (Or as long as the item is owned.)
- (49) Sewer billings and payments.
- (50) Journal entries, resolutions, general receipts.
- (51) Investment records.
- (f) The following records must be maintained permanently.
  - (1) Legal opinions.
  - (2) Deeds.
  - (3) Easements.
  - (4) Abstracts and title insurance policies (or until property is no longer owned).
  - (5) Master park plan.
  - (6) Plats.
  - (7) Aerial photographs.
  - (8) Dam information.
  - (9) Union contracts, grievance and mediation and arbitration records.
  - (10) Building permit applications.
  - (11) Code compliance inspection reports.
  - (12) Board of Appeals decisions and supporting documents.
  - (13) Copies of booking sheets.
  - (14) Immunization records.
  - (15) Relocation orders/maps (latest revision).
- (g) The following records must be maintained for 8 years.
  - (1) Retirement records (after retirement).
  - (2) Deferred compensation records (after retirement).
  - (3) Individual employee personnel files (after termination).
  - (4) Accident reports, injury claims and settlements, injury frequency charts (after termination).
  - (5) Dockets, daily detention facility records, cash books.
  - (6) Arrest records.
- (h) Other records must be maintained as indicated.
  - (1) Constructions plans -- life of structure.
  - (2) Blueprints -- life of structure.
  - (3) Warranty records -- until warranty ends or life of product.
  - (4) Equipment and furnishings inventory -- until superseded.
  - (5) Litigation records or evidence -- as directed by City Attorney
  - (6) Apportionment maps -- until next apportionment.
  - (7) U.S. geological maps -- until new map received.
  - (8) Report of functional jurisdiction of road -- until new map received.
  - (9) Certified mileage lists -- until next list received.
  - (10) Federal election records/electronic ballot tallies -- 22 months.
  - (11) Detachable recording units -- 21 days after election.
  - (12) Ballots -- 30 days after election.
  - (13) Official canvasses -- 10 years after election.
  - (14) Election notices -- 1 year after election, unless contested.
  - (15) All other election materials -- 90 days after election.
  - (16) Bloodborne pathogen records -- 30 years after termination of employment.
  - (17) Equipment and machine maintenance -- life of equipment.
  - (18) Inventory -- until superseded.

- (19) Equipment and vehicle registration reports -- life of vehicle.
- (20) Assessment rolls -- 15 years.
- (21) Financial reports other than annual reports --15 years.
- (22) Special assessment payment register (after collected) -- 15 years.
- (23) Copies of booking sheets -- permanent.
- (24) Fingerprints -- until scanned and classified by State Crime Lab or other police agency.
- (25) Incident records -- 10 years.
- (26) Evidence records -- 10 years.
- (27) Birth certificate information-- 1 year.
- (28) Signatures authorizing vaccinations--10 years.
- (29) Communicable disease outbreak records-- until investigation is complete.
- (30) Police citizen warning tickets -- six months.
- (31) Overnight parking records -- one year.
- (32) Requisitions -- one year.
- (33) General ledger -- 15 years.
- (i) Historical Records. The State Historical Society of Wisconsin has waived the required statutory 60-day notice required by Sec. 19.21(5)(d), Stats., for the records marked "W". The designation "N" requires notice to the State Historical Society of Wisconsin. "N/A" indicates that notice is not applicable due to the permanent retention requirement.
- (j) No requested record may be destroyed until after the request is granted or until 60 days after the request is denied. If an action is commenced under Sec. 19.37, Stats., the requested record may not be destroyed until a court order is issued or all appeals have been completed.
- (k) No record subject to pending litigation may be destroyed until the litigation has been resolved.
- (l) Any public record may be kept and preserved by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the applicable standards of Sec. 16.61(7) Stats. Once reproduced by photographic reproduction, the original document may be destroyed or otherwise disposed of.
- (m) The Menasha Historical Society shall be given notice of any intent to destroy records. Unless the Historical Society gives notice of a list of the specific records they desire to be retained within 60 days of the notice, the record will be destroyed. Should the Historical Society remove any records for inspection or any use, the Historical Society is responsible for their destruction or safekeeping.
- (n) The City Attorney will request waiver from the State Historical Society for their inspection of any records itemized above. Any further requests for waiver will be made by the City Attorney at the request of the appropriate department head, the Mayor or Common Council.
- (o) This ordinance does not apply to records of the Menasha Electric and Water Utility except as required by Sec. 3-3-7(2)(j).
- (p) Health Department Records. In addition to any requirement of this section, all records of the City of Menasha Health Department are also subject to any rules regarding record retention promulgated by the State of Wisconsin Department of Health and Family Services - division of Public Health; and as amended from to time. The City Clerk and Public Health Director shall maintain copies of such rules.

## **SEC. 3-3-8**

## **PRESERVATION THROUGH MICROFILM**

Any City officer or the director of any department or division of City government may, subject to the approval of the City Clerk, keep and preserve public records in his or her possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set forth in Sec. 16.61(7)(a) and (b), Wis. Stats., and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and of Sections 3-3-4 through 3-3-6 of this Chapter.