

Dear Ms. Magnuson,

Thank you for contacting us about your request to view voted ballots and other election related materials. You raise concerns about the possibility of being charged to view ballots in response to a public records request. Your request is one of several requests presented to county and municipal clerks following the June 5th recall elections. Let me provide some basic information about the treatment of election materials, particularly voted ballots, with respect to Wisconsin Public Records law. Wis. Stats., Chapter 19, Subchapter II.

1. Voted ballots, tally sheets and voting equipment printouts showing the results of electronically tabulated ballots are public records.
2. These records may not be viewed by members of the public until after the applicable deadline for requesting a recount has passed or if a recount occurs, the applicable appeal deadline has passed.
3. In the case of the recall elections conducted on June 5, 2012, the recount deadline for Senate Districts 13 and 29 was 5 pm on June 19, 2012.
4. In the case of the recall elections conducted on June 5, 2012, the recount deadline for Governor, Lt. Governor and Senate District 23 was 5 pm on June 26, 2012.
5. The deadline for the appeal of the recount occurring in Senate District 21 has not been established.
6. Custodians of public records are entitled to charge location fees for the actual, necessary and direct cost of location of a record if the cost is \$50 or more. Wis Stats. §19.35 (3)(c)
7. Voted ballots are secured in sealed containers following an election. Wis Stats. §7.51 (3)(a)
8. These voted ballots may be stored in a location separate from the office of the custodian.
9. Under state law no one may touch a voted ballot after it has been deposited in a voting device or ballot box except an election official. Wis Stats. §9.01 (1)(b)11.
10. Voted ballots may be copied or viewed under the public records law.
11. Because voted ballots are the official record underlying the certified election results, local election officials who maintain custody of these records must be diligent in protecting these records from tampering.
12. If an election official, who is the custodian of voted ballots, receives a request to copy or view the records after the applicable deadlines for a recount or appeal have passed, there are several steps that need to be taken to locate these records and make them available for copying or inspection.

13. These steps include:

- a. Retrieving the documents from the secure location,
- b. Making a notation in the chain of custody of the tamper proof seal number on the container holding the voted ballots,
- c. Breaking the seal and making a record in the chain of custody of the removal of the voted ballots from the container,
- d. Copying the voted ballots or making them available for inspection,
- e. Returning the voted ballots to the secure container, sealing the container and making a notation in the chain of custody document of the tamper proof seal number,
- f. Returning the voted ballots to the secure location.

14. If the voted ballots are made available for inspection, they may not be given to the requester to handle. The custodian must present each individual ballot to the requester in a manner that enables the requester to view the ballot without touching the ballot. This is necessary to protect the integrity of the voted ballot.

15. This morning's Wisconsin Supreme Court decision focuses on redaction costs. State law explicitly permits charging location costs if more than \$50.

On June 26, 2012, at the annual Summer Symposium of County Clerks, we shared this advice with County Clerks because of the large number of public records requests submitted to county clerks with respect to voted ballots and other records related to the conduct of the June 5, 2012 recall elections. The county clerks were advised to discuss the requests with their corporation counsel, who is charged with advising them with compliance with the public records law. We believe these steps are directly related to locating the records and preserving their integrity while making them available for copying or inspection consistent with the legislative declaration of policy set out in Wis Stats. §19.31.

Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board

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**From:** Mary Magnuson [REDACTED]  
**Sent:** Tuesday, June 26, 2012 5:08 PM  
**To:** Kennedy, Kevin - GAB  
**Subject:** Fw: ORR Viewing "Fees"

Dear Mr. Kennedy:

I would respectfully request an explanation as to what in heaven's name is going on - now I'm supposed to PAY for VIEWING records? That's a very strange interpretation of the Open Records Law, to say the least. I've no intention of paying, and there is nothing in the statutes that authorizes charging fees for the public's viewing of records.

I hope you all are having a great time at your convention. Meanwhile, I am spitting angry about this nonsensical response from Kathy, who I even VOLUNTARILY worked for on two election nights. Geeeez.

May I please hear from you - Renee Shavers said to say hello.

Mary Magnuson  
Brookfield, WI

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**From:** "Nickolaus, Kathy" [REDACTED]  
**To:** 'Mary Magnuson' <[REDACTED]>  
**Sent:** Tuesday, June 26, 2012 4:52 PM  
**Subject:** RE: ORR Viewing "Fees"

Kevin Kennedy gave us County Clerks this information at a meeting today. I sent you the email when at the same time he was talking to us.

"With a gentle spirit"

Kathy Nickolaus  
Waukesha County Clerk  
262-548-7010

\*\*\*Please note that under Wisconsin's very broad public records law, e-mail communications to and from county officials are subject to public disclosure.\*\*\*

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**From:** Mary Magnuson [REDACTED]  
**Sent:** Tuesday, June 26, 2012 3:29 PM  
**To:** Nickolaus, Kathy  
**Subject:** ORR Viewing "Fees"

Dear Ms. Nickolaus:

With regard to your response, below.

Kindly provide me with either a copy of the opinion you received from the GAB, or, at least identify the person who gave it, if you contend that the advice you received was, in fact verbal.

I will wait to hear from you.

Mary Magnuson  
Brookfield, WI

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**From:** "Nickolaus, Kathy" [REDACTED]  
**To:** Mary Magnuson [REDACTED]  
**Sent:** Tuesday, June 26, 2012 1:45 PM  
**Subject:** RE: Please confirm

Mary,  
I just heard from the GAB that the cost of Staff, and supplies will need to be the responsibility of your group. Do you know how many hours you may need. The cost of staff is considered a location fee. I would like to give you an estimate if I would know the amount of time you will require.

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**From:** Mary Magnuson [REDACTED]  
**Sent:** Thursday, June 14, 2012 10:44 PM  
**To:** Nickolaus, Kathy  
**Subject:** Please confirm

Kathy, please confirm that you have received my email indicating that 6/28 is confirmed - via return email. I have received nothing from you and am concerned as to whether you received my email or not.