



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: July 7, 2023

TO: City of Milwaukee Elections Commission
Milwaukee County Elections Commission
Wisconsin Municipal Clerks
Wisconsin County Clerks

FROM: WEC Staff

SUBJECT: Public Records Requests for Completed Absentee Ballot Applications & Identification

1. PURPOSE. Many Wisconsin clerks recently received public records requests seeking completed absentee ballot applications and copies of each applicant's photo identification for each election year from 2018 to the present. The WEC cannot represent your jurisdiction or tell you how to respond to public records requests. However, the WEC can provide general information about public records request laws and procedures relevant to election documents.

Key points in this memo include:

- a) Public records requests must be reasonable in scope and time.
- b) Municipalities are not required to retain absentee ballot applications indefinitely.
- c) Not all voters must provide photo ID with an absentee ballot application.
- d) Most photo IDs contain confidential information (PII).
- e) Absentee voter records may be requested by the public using the Badger Voters portal (<https://badgervoters.wi.gov/>).
- f) You may ask a requestor to clarify or narrow the scope of an unclear or broad request.
- g) Unreasonable records requests, or requests for protected information, may be denied.

2. WISCONSIN PUBLIC RECORDS LAW

Wisconsin Statutes [Chapter 19](#), Subchapter 2, details the state's public records laws. The Wisconsin Department of Justice also publishes a comprehensive guide to understanding these laws, and the Office of Open Government at DOJ can answer applicable questions ([DOJ Public Records Guide](#)). Of particular importance is that the law requires, "Each authority, 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. Wis. Stat. § 19.35(4)(a).

The courts have determined that what constitutes a "reasonable time" for a response to any specific request depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and related considerations. In other words, you may subjectively assess the request and your resources when assessing how quickly a response can be completed, or if you need to request clarification or a narrowed scope.

Wisconsin Elections Commissioners

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Administrator
Meagan Wolfe

The law also allows a public office to charge a requester only for the specific tasks identified by the Legislature in the fee provisions of Wis. Stat. § 19.35(3), unless otherwise provided by law. This means your office can charge for the costs of certain activities like searching for and copying records, but not other activities, such as redacting the records. The sources cited above should be consulted before assessing fees. There are no fee exceptions for media making public records requests in Wisconsin.

3. DISCUSSION.

Reasonable Scope and Time: Wisconsin law requires that all public records requests must contain a reasonable limitation as to subject matter or length of time represented by the records sought. Wis. Stat. § 19.35(1)(h); *Schopper v. Gehring*, 210 Wis. 2d 208 (Ct. App. 1997) (requesting a copy of 180 hours of audiotape of 911 calls, together with a transcription of the tape and a log of each transmission received, was a request without reasonable limitation and was not a sufficient request under 19.35(1)(h)). While it is true that the potential for a large volume of records is not in itself a sufficient reason to deny a request as not properly limited, at some point, an overly broad request becomes sufficiently excessive to warrant rejection under 19.35(1)(h). *Gehl v. Connors*, 2007 WI App 238 (Ct. App.).

Records Retention: Municipalities are not required to have retained copies of absentee ballot applications going back to 2018. Unless there is a recount, notice of an election contest, or any contest or litigation pending with respect to the election, clerks may destroy applications and certificate envelopes for absentee ballots 90 days after most elections, and 22 months after any election containing a federal contest. Wis. Stat. § 7.23. Records should not be destroyed if they are already subject to a public records request.

Photo Identification: Not all voters are required to submit proof of photo identification to submit a sufficient absentee ballot application. For example, many voters submitted a proof of identification with a previous absentee ballot request and have not moved or changed their names, meaning that they may submit sufficient absentee ballot applications without providing photo identification again. Wis. Stat. § 6.87(4)(b)3.

Confidential Information: Driver's licenses and some other forms of identification contain Personally Identifiable Information (PII) that cannot lawfully be released pursuant to a public records request. Wis. Stat. § 6.36(1)(b)1.a. PII means "information that can be associated with a particular individual through one or more identifiers or other information or circumstances." Wis. Stat. § 19.62(5). Other forms of ID may require a more thorough analysis if Wis. Stat. § 6.36(1)(b)1.a. does not cover them.

Badger Voters: Absentee ballot data may be requested by the public using Badger Voters (<https://badgervoters.wi.gov/>) and may provide the information sought. An absentee record in Badger Voters includes the requester's name, address, and any contact information they provided with the absentee request, as well as information about the request and the ballot such as when the request was received by the clerk, when the ballot was issued, whether it was received and whether it was counted or disqualified and why. A custom request could be submitted to receive information concerning whether a voter submitted photo identification with the request. However, Badger Voters does not contain original written absentee ballot requests, which may have been received in a variety of ways, most commonly by email, mail, or in person. Wis. Stat. § 6.86(1)(a).

4. CONCLUSION. WEC cannot represent your jurisdiction or tell you how to respond to public records requests. The law regarding public records requests can be complex and municipalities may wish to consult with their own attorney for advice. If you have questions about this memorandum, please contact our HelpDesk at elections@wi.gov or call (608) 261-2028.