

# WISCONSIN ELECTIONS COMMISSION

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**DATE:** December 8, 2016

**TO:** Wisconsin County Clerks  
Milwaukee County Election Commission  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission

**FROM:** Michael Haas  
Administrator

Nathan W. Judnic  
Legal Counsel

**SUBJECT:** Public Record Requests for Election Related Materials

On November 30, 2016, the Wisconsin Elections Commission (WEC) issued a brief clerk communication (<http://elections.wi.gov/node/4484>) related to a request made by Mr. Harvey Wasserman which sought 64 different documents or items from county and municipal clerks under Wisconsin Public Records law. The WEC is aware that county and municipal clerks have begun receiving additional public records requests seeking a variety of materials related to the November 8, 2016 election and the subsequent recount. The WEC's November 30 communication indicated that the staff would be reviewing Mr. Wasserman's request and providing clerks additional guidance regarding a response. The WEC staff intends to contact Mr. Wasserman regarding his request to see if there is any information that may be more easily obtained through the WEC and would ask that he subsequently amend his request as necessary. Because WEC staff continues to be fully engaged in monitoring the recount in many counties, however, we are simply not able to devote much time on these requests until after the recount is complete.

In the interim, the WEC staff provides the following guidance for consideration:

- Consultation with your corporation counsel or municipal attorney is imperative, as the requests have been made for county and/or municipal records. While the WEC may be able to assist in responding to some of the requests at the State level (records contained in the WisVote system, for instance), ultimately, the county and municipality are responsible for providing a response to the request (whether the response provides records or indicates your office is not the custodian of the record or that the record does not exist, etc.).
- If you believe the request is unclear, or you need clarification on what the requestor is seeking, we would advise that you reach out to the requestor to avoid undue delay and cost in locating records that the requestor was not seeking. While these clarifying communications are not required under the public records law, given the size and complexity of some of the records requests that have been submitted, it may benefit both you and the requestor in the long run to have an agreed upon understanding of what is being sought.

- The public records law allows the custodian of a record to require pre-payment of fees associated with responding to the request that exceeds \$5.00. Wis. Stat. § 19.35(3)(f). The most common allowable fees include location costs (if they exceed \$50.00), copying and transcription costs, document reproduction costs (usually if printing records from an electronic source) and mailing and shipping costs. Only actual, necessary and direct costs are allowed to be charged; the municipality or county cannot make a profit on responding to a public records request. Based on the public record requests you have received, in consultation with your county corporation counsel or municipal attorney, an estimate of allowable costs could be provided to the requestor, with a requirement that such costs be pre-paid (if exceeds \$5.00) prior to providing responsive documents.
- The public records law requires a response within a reasonable period of time. The Attorney General has opined that in many cases involving simple requests, 10 days is a reasonable period of time. However, the timeline may also take into consideration the current workload and priorities of your office. If you are unable to fully respond for an extended period of time, you may wish to acknowledge the request in writing, outline what matters may delay a response, and provide an estimated date for when a more complete response will be provided. We recommend consulting your legal counsel in such cases to ensure proper documentation of events which may cause delay and determining a reasonable timeline for a response.

### Additional Resources

A link to the Wisconsin Department of Justice's Public Records Law Compliance Guide is contained here: <https://www.doj.state.wi.us/sites/default/files/dls/2015-PRL-Guide.pdf>

The former Government Accountability Board provided advice to county and municipal clerks on large public records requests that are similar to what you have received recently. Below are links to the communications and advice provided by the Wisconsin Department of Justice on responding to similar requests.

#### **Election Defense Alliance request – May 2011**

<http://elections.wi.gov/node/1857>

#### **Elections materials, ballots and memory devices request – July 2012**

<http://elections.wi.gov/node/2409>

#### **Magnuson records request – June 2012**

<http://elections.wi.gov/node/2406>

#### **Elections statistics request – August 2012**

<http://elections.wi.gov/node/2456>

#### **Logan Churchwell request – February 2013**

<http://elections.wi.gov/node/2748>

#### **Memory Device requests – September 2013**

<http://elections.wi.gov/node/2960>

We hope you find this guidance and the resources listed above helpful. We will revisit whether we can provide any additional assistance, particularly with regard to the request submitted by Mr. Wasserman, following the completion of the recount.

If you have any additional questions regarding this matter, please contact the WEC Help Desk at (608) 261-2028 or [elections@wi.gov](mailto:elections@wi.gov).