Your Right to Know by Christa Westerberg

Outsiders can’t block records access

Wisconsin’s open records law is most often used by requesters seeking to obtain records from a government agency. But occasionally it works in reverse, allowing someone to block the release of records to a requester.

The Wisconsin Supreme Court has recently [affirmed](https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=529529) important limits on such efforts. Ironically, it was the court that created the opportunity in the first place.

Up until 1996, the notion that someone could prevent a records custodian from fulfilling someone else’s records request was not recognized in Wisconsin law. But that year, the court created a private right of action to seek the denial of records access in a case, [Woznicki v. Erickson](https://casetext.com/case/woznicki-v-erickson-1), concerning a school district employee accused of improper contact with a minor.

Public employees and others were given a pre-release right to review and attempt to suppress certain records. But for years afterwards, in the [words](http://wisfoic.org/august-records-fix-shows-system-can-work/) of former Freedom of Information Council President Jeff Hovind, “public record keepers struggled with the hows, whos, whens, and whys of this new process.” Many records were now being released only after “a long, often expensive legal jangle.”

The Wisconsin Legislature created a special committee to study the issue and make recommendations. That led to the bipartisan passage in 2003 of what was known as the “Woznicki Fix.”

It limited the ability of non-requesters to review records before they were released to a few narrow categories of people: public employees who were the subject of a disciplinary investigation, persons named in records created by private employers, and persons named in records obtained through subpoena and search warrant. And it set strict timelines, so that disputes could be quickly resolved and any responsive records made available as soon as possible.

Problem solved, right? Wrong.

In 2020, Wisconsin Manufacturers and Commerce brought a case that, had it succeeded, would have made the Woznicki Fix almost meaningless and the right to block the release of public records expansive.

Alerted that the Wisconsin Department of Health Services intended to release data on certain businesses with two or more COVID-19 cases, WMC and two other trade groups sued to block release under a different law: Wisconsin’s declaratory judgments act.

Initially, WMC was successful. It convinced a circuit court to put a stay on the release of records while the case was litigated.

But this summer, the Wisconsin Supreme Court ruled 4-3 that the Legislature had “in no uncertain terms” limited the right to review and block release of records. It concluded that WMC’s claim was barred by the statute. The group has since filed a motion for reconsideration, which remains pending.

While WMC lost the case, it did succeed in blocking the release of these records for nearly two years, until long after this information was useful from a news-gathering or public health point of view.

And it demonstrated that battles transparency advocates think they have won sometimes have to be fought again. Let’s hope that this time, the win sticks.

*Your Right to Know is a monthly column distributed by the* [*Wisconsin Freedom of Information Council*](https://www.google.com/url?q=http://www.wisfoic.org/&sa=D&source=docs&ust=1661995074619773&usg=AOvVaw1hUppb_Ms5nYJgW0q-ebeH) *(wisfoic.org), a group dedicated to open government.* *Christa Westerberg is the Council’s vice president and a partner at the Pines Bach law firm in Madison, Wisconsin. She filed an amicus brief in this case on behalf of the Council and other organizations.*