Your Right to Know / Bill Lueders

Long waits undercut records law

The other day, in my role as an advocate for open government, I heard from a Wisconsin resident who has waited more than five months for records he requested from a local law enforcement agency. He has gently prodded the agency several times, asking, “How much more time is my request going to take?” More than three months have passed since these queries have yielded a response.

Such long, frustrating wait times are not uncommon. Wisconsin’s [Open Records Law](https://wisfoic.org/text-of-open-records-law/) allows any person to obtain any document in the possession of state and local government officials, with limited exceptions. But, unlike in some other states, there is no set time limit. Rather, the law simply directs record custodians to act “as soon as practicable and without delay.”

What does that mean? Good question.

The state Justice Department has [said](https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL%20Guide_2024.pdf) that “10 working days is a reasonable time for an authority to respond” to simple records requests. But this is not binding advice. Moreover, no court has ever ruled that a particular wait-time was excessive.

I tell people experiencing long wait times to practice their “Ps”: Be polite. Be persistent. And be pragmatic — offer to clarify or refine your request to make it more manageable. Sometimes, this helps move things along. Other times, it seems to make no difference.

That’s where Tom Kamenick comes in. He is the founder and president of the [Wisconsin Transparency Project](https://www.wiopenrecords.com/), the state’s only law firm devoted entirely to open government litigation. Since 2019, Kamenick has filed seven lawsuits alleging illegal delays in the processing of open records requests. He has lost only one case — in which the records were provided but had ended up in the requester’s spam folder.

His other six cases ended in settlements favorable to the requestors: records were provided, legal costs were covered and, in at least one case, the custodian [apologized](https://isthmus.com/news/news/city-apologizes-settles-public-records-lawsuit-with-isthmus/). The problem is that these settlement wins do not set a legal precedent that can be cited by others, although they do add credibility to threats of legal action.

Last year, Kamenick [sued](https://wisfoic.org/july-record-delays-are-contrary-to-the-law/) the Madison Police Department on my behalf after it told me to expect a wait time of 14 months to obtain records related to police discipline. The office [hired](https://isthmus.com/opinion/opinion/records-shed-light-on-cop-complaints/) additional staff and authorized overtime to reduce its backlog. Last month, Kamenick [sued](https://www.wiopenrecords.com/post/records-lawsuit-filed-against-racine-sheriff-s-office) the Racine County Sheriff’s Department on behalf of a local resident, Mitchell Berman, over its long delays in producing records including video footage. “Delays like this are all too common,” Kamenick noted in a statement.

Custodians often contend they lack the staff and resources to handle requests more promptly. Kamenick’s response is to say it isn’t a question of resources but priorities. One school district he sued had a $600 million budget and assigned a single staff position devoted to records requests, then allowed that position to go unfilled.

Indeed, the records law expressly states that handling records requests “is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.” That means it should be more of a priority.

Eventually the courts should weigh in on this, in a precedent-setting case. The problem also cries out for a legislative solution. A revised law could still say “as soon as practicable and without delay,” but also set a time limit of, say, 30 days, for records to be provided, absent extraordinary circumstances. Perhaps the state could provide additional funding or guidance to help make this doable — certainly there are worse ways it could spend its [$4.6 billion budget surplus](https://www.wpr.org/politics/wisconsin-ends-2024-fiscal-year-with-4-6b-surplus-down-from-7b-record-but-above-projections).

There is an old saying that justice delayed is justice denied; the same is true for records requests. If you don’t get the records until you can hardly remember what you wanted them for, the law is not working as intended.

*Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (wisfoic.org), a group dedicated to open government. Bill Lueders, a writer in Madison and editor-at-large of The Progressive, is the group’s president.*



Bill Lueders, provided photo.