YOUR RIGHT TO KNOW / BILL BARTH

How cost is used to deny access to records

There’s good news and bad news in a recent Wisconsin Court of Appeals [decision](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=894720) upholding an open records judgment related to the ridiculous and ham-handed investigation into alleged 2020 election fraud headed by former Supreme Court justice Michael Gableman.

On the good news side, the appellate court upheld a lower court ruling that the state of Wisconsin must pay $241,000 in legal fees because various officials — including Gableman and Assembly Speaker Robin Vos — flouted the public records law by failing to turn over legally requested information in a timely manner.

The bad news? There’s plenty. First, taxpayers — not the offending political characters — have to pony up the $241,000. And taxpayers clearly did nothing wrong.

Moreover, this case illustrates a near-fatal flaw in the state of Wisconsin’s otherwise exemplary Open Records Law. The statute is among the nation’s best, setting forth that Wisconsin considers openness the default position and holding that records requesters who are denied documents illegally may recover court costs and lawyers’ fees.

But think about that number again. Who has $241,000 to put on the line in an attempt to force the government to follow its own laws?

In this particular case, an established liberal organization called American Oversight fought to make the government abide by the law.

This same law, though, is supposed to empower every citizen to approach any level of government — the school board, the city council — and request access to public records, which then must be turned over except in relatively rare instances that fall within narrowly defined exemptions. That sounds better than it sometimes works in practice, as the Gableman case shows.

If authorities decide to be difficult and stonewall a records request, the citizen can hire a lawyer and go to court like American Oversight. And, in fairly short order, the citizen could wind up owing a lot of money.

That potential outcome is not a secret. Officials at all levels of government are well aware that prohibitive costs can lead to would-be records requesters relinquishing their rights rather than risking high legal fees. Any time that happens — and it does happen — a good law is turned upside down in a way that encourages public officials to just say no.

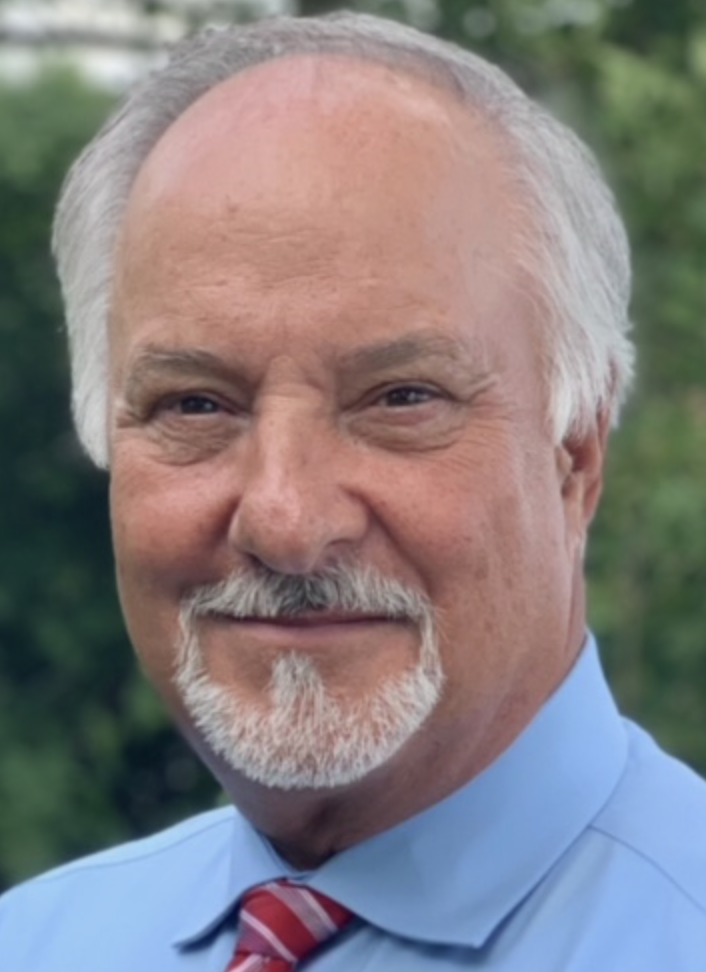
In the past, news media organizations frequently stood in for citizens and went up against public authorities bent on hiding secrets. That can cost a lot of money and, the state of the news business being what it is these days, fewer news organizations are willing to take on this risk. As a result, citizens’ rights to information are diminished.

An alternative does exist in the law. When records are refused, the law says requesters can turn to county district attorneys or the Wisconsin Attorney General’s Office. But again, in practice, that’s a weak option. Prosecutors are busy dealing with burglars and rapists and killers. Taking on their fellow government officials over a stack of paper is low on the priority list. It’s rare for a district attorney anywhere in the state to haul a city, county or state records custodian in front of a judge to enforce the law.

So too many officials believe they can get away with withholding public records. Or, they can rest easy in the knowledge it will be taxpayers, not them, stuck with the bill even if they lose a challenge.

The Legislature could fix this, with a reform that sharpens enforcement teeth in the law. Instead, it’s the sound of silence that you hear coming from the Capitol, and every other government building.

*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 Barth is the former editor of the Beloit Daily News, where a version of this column originally appeared.*



Bill Barth headshot.