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To: Members of the Wisconsin Legislature

From: Americans for Prosperity – Wisconsin

IRG Action Fund

Wisconsin Broadcasters Association

Wisconsin Freedom of Information Council

Wisconsin Institute for Law and Liberty

Wisconsin Newspaper Association

Wisconsin Transparency Project

On behalf of our diverse coalition, we respectfully ask that you co-sponsor LRB 2241 being circulated by Representative Todd Novak and Senator Van Wanggaard. This legislation simply allows a judge to determine whether a requester of public records is entitled to reasonable attorney's fees, regardless of when a delayed request for public documents was finally fulfilled. This was the historic interpretation of our law until a recent Wisconsin Supreme Court decision.

The bill is necessary after a 2022 Supreme Court opinion, *Friends of Frame Park, U.A. v. City of Waukesha*, held that if a governmental entity releases records AFTER a suit has been filed, but BEFORE a court acted on the case, the requester is not entitled to seek attorney’s fees. The Court based its decision on a narrow interpretation of the word “prevail” in the existing public records statute. The Court ruled a judge must affirmatively order a unit of government to turn over public records for a requester to “prevail” and, therefore, be eligible to seek reimbursement for legal fees.

That narrow interpretation of what it means to prevail allows governmental bodies to hold onto public records until a requester files a lawsuit knowing they face no penalty if they turn over the records before a judge even has an opportunity to act.

Prior to the decision, a broader definition of prevail was used allowing courts to determine if the legal actions of a requester had played a significant role in the records release. By codifying the previously used broader definition of prevail in Wisconsin statues, LRB-2241 will remove the perverse incentive for governments to hold on to public records until a lawsuit is filed. Last session, this bill received broad bi-partisan support, passing the State Senate unanimously.

Pursuing access to public records can require litigation and litigation can be expensive. The denial of the payment of attorney’s fees in cases where the requestor ultimately prevails prior to the case being fully litigated is having a chilling effect on the media and the public's ability to pursue public documents. We hope you will add your name to this important piece of legislation that will help ensure government can’t withhold information from the public.

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