LEGAL ISSUES IN THE DIGITAL FRONTIER

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Public Records – General Presumptions

- Wisconsin is a Blue Sky State.

- Public policy of the state is that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.

- General presumption is that public records are open to public unless there is a clear statutory or common law exception.
  - If there is no clear statutory or common law exception the custodian must conduct what's referred to as "The Balancing Test," and determine "whether the strong presumption of favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 28.
  - There are reportedly more than 175 specific statutory exceptions to the Public Records Law. *State ex rel. Blum v. Board of Educ., Sch. Dist. of Johnson Creek*, 209 Wis.2d 377 (Ct. App. 1997).

- Examples of Statutory Exceptions:
  - Wis. Stat. § 19.36(10)(a) (Employee home address, e-mail, phone number or SS#)
  - Wis. Stat. § 19.36(12) (Prevailing wage information)
  - Wis. Stat. § 19.36(13) (Financial identifying information)
  - Wis. Stat. § 43.30 (Library user records)
  - Wis. Stat. § 51.30 (Mental health records)
  - Wis. Stat. § 118.125(1)(d) (Pupil records)
  - Wis. Stat. § 905.03 (Attorney- client privilege)
  - Wis. Stat. § 968.26 (John Doe Investigations)

- Examples of Common Law Exceptions:
  - **Prosecutor's Files**, *State ex rel. Richards v. Foust*, 165 Wis.2d 429, 477 (1991);
  - **Safety Concerns**, *Linzmeyer v. Forcey*, 2002 WI 84; *Ardell v. Milwaukee Board of School Directors, et al.*, 2014 WI App 66;
  - **Pledge of Confidentiality**, *Mayfair Chrysler-Plymouth, Inc. v. Baldotta*, 162 Wis.2d 142, 171-172 (1991);
  - **On-Going Criminal Investigation**, *Newspapers, Inc. v. Breier*, 89 Wis.2d 417, 438 (1979) (under balancing test);
  - **Suicide Scene Photographs**, *National Archives and Records Administration v. Favish*, 541 U.S. 157 (2003).
  - **Privacy/Reputational Interests**, *Woznicki v. Erickson*, 202 Wis.2d 178 (1996)

What is a Record?

- A Record is defined as "any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been **created or kept by an authority**." Wis. Stat. § 19.32(2).
  - Must be created or kept in connection with an *official purpose or function of the agency.*
  - Record includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes, optical disks, and any other medium on which electronically generated or stored data is recorded or preserved.
  - Record does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.
  - Attorney General's Office has opined that content determines whether a document is a "record," not medium, format or location. OAS I-06-09.

Other Definitions

- An Authority is any state or local office, elected official, agency, board, commission, committee, council, department, etc. Comprehensive list of what is an authority is found in Wis. Stat. § 19.32(1).

- A Requester is any person who seeks to inspect or copy a record, except a committed or incarcerated person, unless the person seeks to inspect or copy a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under chapter 767, and the record is otherwise accessible to that person by law.

- A Legal Custodian is defined as an elected official, or chairperson of a committee of elected officials. Otherwise government agencies must designate in writing one or more positions occupied by an officer or an employee of the agency to fulfill the custodian's duties under the Public Records Law. In the absence of such, it's the agency's highest ranking officer or chief administrator.

History Of Public Records In Wisconsin

- Wisconsin has only had a Public Records Law since the early 20th century.
- From 1917 until 1983, the law remained virtually unchanged.
- The 1983 version of the law completely replaced its predecessor, however it retained the presumptions and exceptions developed at common law.
- In 2003, the law was amended to simplify and clarify instances in which a records custodian is required to give notice to an employee whose privacy or reputational interests may be affected by disclosure of records in response to a public records request.
- Since 2003, there have been no meaningful overhauls to the public records law.

The Problem

- Largely unchanged since 1983, the Public Records Law has not kept up with the technical innovations of the last 32 years.
  - i.e. Computers, duh.
  - Also, other stuff:
    - Metadata
    - Social Media
    - Databases
    - Listservs
    - Cookies
    - Desktop Publishing
    - Electronic Record Retention

- Traditionally, it was fairly easy to designate which records related to official purpose and function of an agency, but as more and more work is being performed outside the office on laptops, smart phones, tablets, and whatever's next (smart watches?), it's becoming increasingly difficult to determine what is and is not subject to the Public Records Law.

E-Mail

- Electronically generated or stored data is subject to the Public Records Law. Wis. Stat. 19.32(2).

- *Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86, 327 Wis.2d 572
  - The Wisconsin Rapids School District has an official policy that allows its employees occasional personal use of its e-mail computer system. A citizen made a public records request for the e-mail of 5 teachers for a defined period of time. The school district decided to release responsive e-mails, including some that were personal in nature. When informed of their decision, the teachers sought a court order to prohibit release of their purely personal e-mails. The circuit court held that e-mails were records as defined by the public records law, and were subject to disclosure to the public under the balancing test.

  - The teachers appealed the circuit court decision, and the court of appeal certified the case to the Wisconsin Supreme Court.

– A majority of the Supreme Court held that when a records custodian decides that the content of an e-mail is purely personal, has no connection to the government's functions, and "evince[s] no violation of law or policy," the custodian does not have to undertake the balancing test.

  - The lead opinion, written by Justice Abrahamson and joined by Justices Crooks and Prosser, concluded that purely personal e-mail, regardless of where it is located, is not a record as defined by the Public Records Law, and thus not subject to disclosure to the public. ¶¶ 22, 142.

  - Justices Bradley and Gableman wrote concurring opinions, concluding that the e-mails were records as defined in Wis. Stat. § 19.32(2), but that they would not be subject to disclosure. Justice Bradley wrote that when the content of an e-mail is personal and evinces no violation of law or policy, the balancing test is not required and the records should not be released. ¶ 172. Justice Gableman implied that a balancing test might be required, but agreed that a records custodian should not release the content of e-mails that are purely personal and evince no violation of law or policy. ¶ 183.

  - A majority of the Supreme Court agreed that the balance always weighs in favor of nondisclosure of personal e-mail when there is no violation of law or employer policy. ¶ 10, n.4.

– Interpreting *Schill*, the Attorney General's Office has opined that the definition of "record" does not exempt purely personal e-mail send or received on an authority's computer, but that it does not need to be disclosed if purely personal.

Social Media

- In 2009, the attorney general issued an informal opinion responding to the question of whether a town chairperson can discuss town business in a private website and refuse to allow certain requesters to participate in the discussion.
  - Informal Wis. Op. Att'y Gen. (I-06-09, Dec. 23, 2009). http://www.doj.state.wi.us/sites/default/files/dls/files/I-06-09.pdf

- At issue was a Google Group website, similar to a Facebook page, created by a town chairperson. The site discussed town business. Access to the site was restricted to "friends" of the town chairperson. A local newspaper reporter made a request for electronic access to the website, which was denied. The town chairperson claimed that the website was not an official entity and was not used to conduct formal town business, which prompted the reporter to request an opinion from the attorney general.

- The attorney general concluded that the content of the communications included on the website are probably records subject to the Public Records Law because the website was created by a town chairperson, an authority as defined by the law, and it included discussion of town business. The attorney general also concluded that the content of the site was probably subject to disclosure unless any exception applied to the website discussions, or portions of the discussions.

- The attorney general rejected the town chairperson's argument that she maintained the website "as a private individual and not in her capacity as town chair." Citing *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, 679 (1965), the attorney general wrote that the definition of a record includes all content created or maintained by "a public officer within his authority where such writing constitutes a convenient, appropriate, or customary method of discharging the duties of office."

  - Conversely, the attorney general advised that if a public official creates a website on his or her own computer, at his or her own expense, and the content is purely personal, such records or information included on the website would "likely not constitute a record." pg. 3.

– In a footnote, the opinion clarified the circumstances under which communications included on the website may not meet the definition of a record under the Public Records Law.

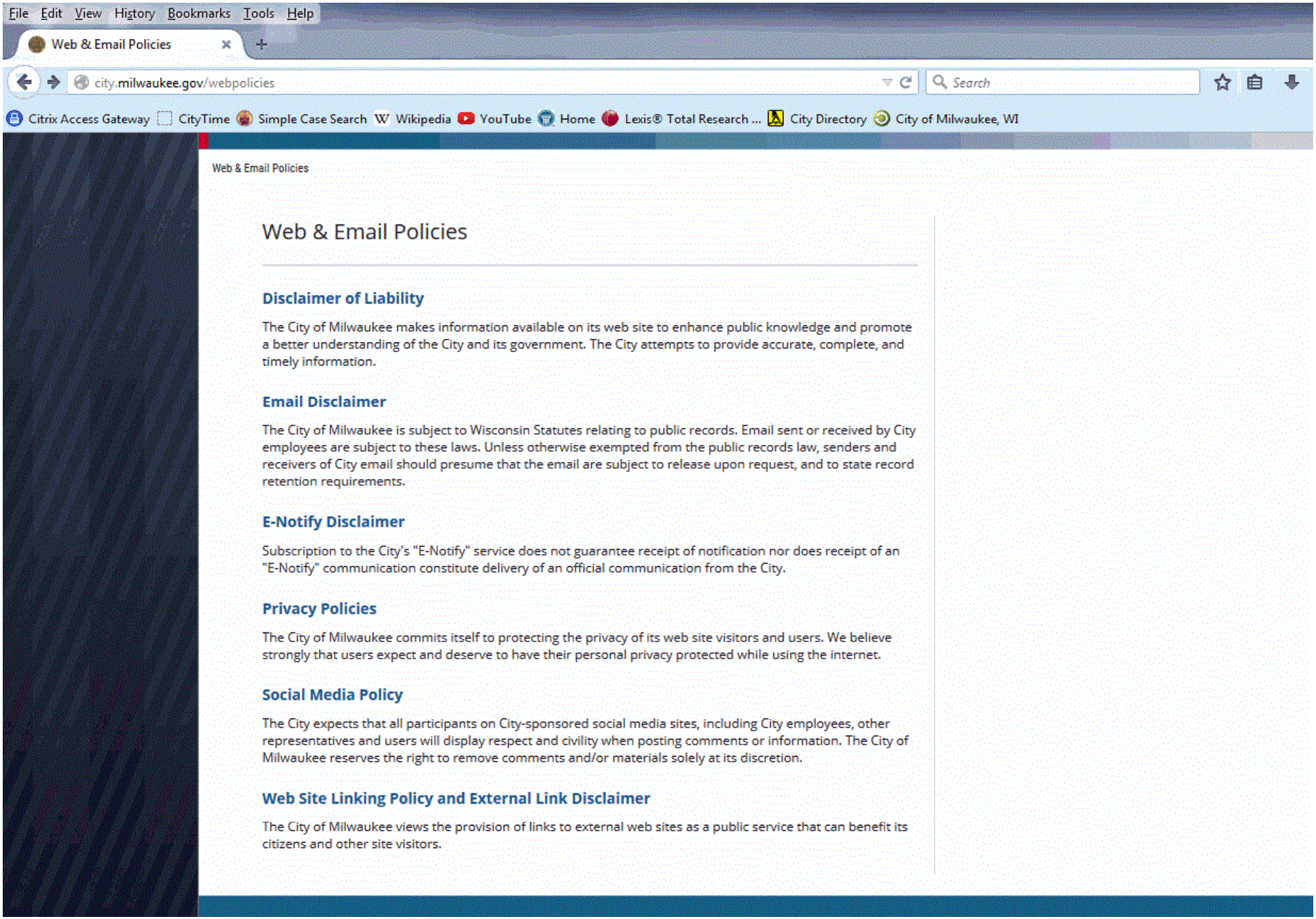
> "While it is not necessary, at this time, to articulate a precise standard for resolving any such issues, there are a number of factors that would need to be considered. These factors would include, but not be limited to:
>
> (a) a recognition that even elected officials have a constitutional right to engage in First Amendment activities and to privacy;
>
> (b) whether public resources were used;
>
> (c) whether the public official had a definable, non-public capacity to which the alleged record relates (*i.e.*, is he/she acting as a candidate, a family member, a director of a private corporation, an educator, etc.);
>
> (d) whether a reasonable member of the public would view the related activity as a public function;
>
> (e) whether the recipients of the alleged record are limited to "personal" contacts;
>
> (f) whether the alleged record was generated at a time, place, and in a manner, in which public business is normally conducted; and
>
> (g) the purposes for which the document was created, kept, or maintained."

- The Attorney General further concluded that although the subject website was more likely than not a record, the Public Records Law only requires the right of access to or copies of the record, not electronic access to a website. In other words, unless there is a statutory, common-law or public policy exception to disclosure the public has the right to inspect or to receive a copy of the website communications, but the public does not have a right to participate in the website discussion.

- Finally, the Attorney General commented that the opinion was expressed with the understanding that the participants on the website are not necessarily public officials and that the participants do not include any kind of quorum that would trigger the application of the Open Meetings Law.

  – The Attorney General has advised that, depending on the specific facts of each situation, e-mail correspondence or instant messaging may be subject to the Open Meetings Law.

    - *Informal Correspondence from Wis. Att'y Gen. to Mr. Tom Krischan* (Oct. 3, 2000).
    - *Informal Correspondence from Wis. Att'y Gen. to Mr. Dan Bensen, Milwaukee Journal Sentinel, Cedarburg Bureau* (Mar. 12, 2004).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Subscription to the City's "E-Notify" service does not guarantee receipt of notification nor does receipt of an "E-Notify" communication constitute delivery of an official communication from the City.
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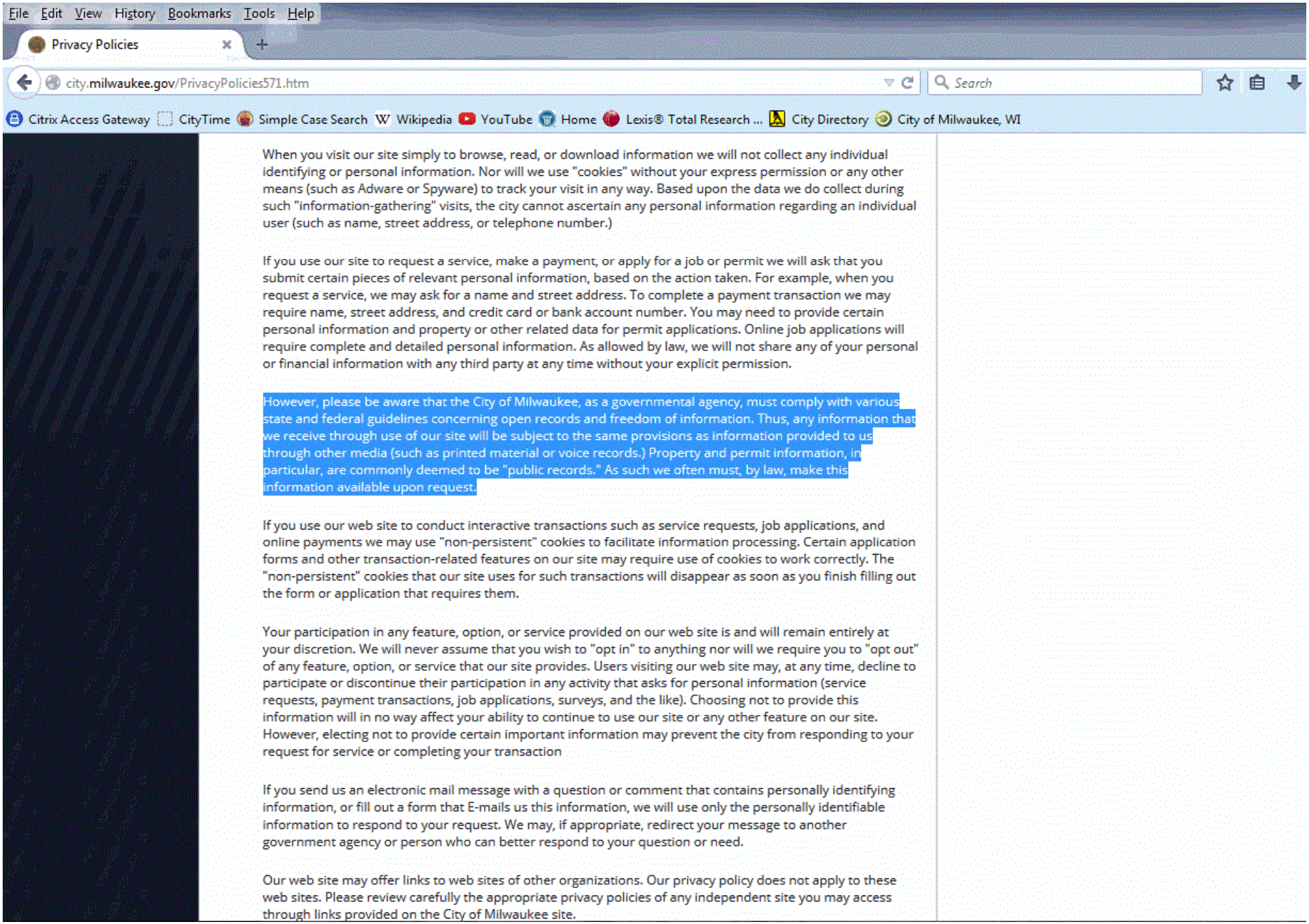
Social Media Policy
The City expects that all participants on City-sponsored social media sites, including City employees, other representatives and users will display respect and civility when posting comments or information. The City of Milwaukee reserves the right to remove comments and/or materials solely at its discretion.
Web Site Linking Policy and External Link Disclaimer
The City of Milwaukee views the provision of links to external web sites as a public service that can benefit its citizens and other site visitors.

LEGAL REQUIREMENTS

Public records laws of the State of Wisconsin and local ordinances may require retention of any information, materials, and/or discussion on social media sites that involve City of Milwaukee employees and relate to official City business. Individual City departments will be responsible for ensuring proper retention of content posted by their employees to social media sites.

For purposes of complying fully with existing laws, retention of social media content as public records would likely include any comments, queries, information, or materials submitted by end users, including under certain circumstances, personal information submitted voluntarily such as the user's name and/or address. Departments will retain these records in an accessible and usable format that preserves the integrity of the original records for the period designated by appropriate records retention schedules.

Communication among members of governmental bodies using social media may constitute a "meeting" under the Wisconsin Open Meetings Law. For this reason, members of these bodies are strongly discouraged from interactions with other members on social media sites.



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If you send us an electronic mail message with a question or comment that contains personally identifying information, or fill out a form that E-mails us this information, we will use only the personally identifiable information to respond to your request. We may, if appropriate, redirect your message to another government agency or person who can better respond to your question or need.

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4th Amendment Right to Privacy

- The 4th Amendment guarantees "privacy, dignity and security of persons against certain arbitrary and invasive acts by officers of the Government, without regard to whether the government actor is investigating crime or performing another function. *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 613-14 (1989).

- The 4th Amendment applies when the government acts as an employer. Individuals "do no lose 4th Amendment rights merely because they work for the government instead of a private employer." *O'Connor v. Ortega*, 480 U.S. 709, 717 (1987).

- In *City of Ontario v. Quon*, the U.S. Supreme Court analyzed whether a police officer had a right to privacy in personal text messages sent and received on a police-issued pager.

- *City of Ontario v. Quon*, 130 S. Ct. 2619 (2010)
  - The city of Ontario Police Department (OPD) issued pagers to their officers to help them respond to emergency situations. The wireless contract the OPD entered only covered a limited number of characters sent or received each month for each user. The city of Ontario had in place a "Computer Usage, Internet and E-Mail Policy" that covered all employees. The policy clearly stated that the city reserved its right to monitor and log all e-mails and Internet usage with or without notice to users. The policy made clear that users had no expectation of privacy or confidentiality in any communication conducted on city-issued equipment. Officer Quon signed a statement acknowledging that they had read and understood the policy. An OPD directive was put into writing that stated that text-messaging was considered e-mail subject to the city policy.

  - Quon's text-message use exceeded the allotted limit. Although Quon's supervisor initially told officers that he would not review the content of their messages as long as the officers paid for any overages, he later became tired of being the "bill collector," and decided to monitor the content of the text messages to determine whether they were work-related or personal It was discovered that most of Quon's text messages were personal, and some were sexually explicit. The records were turned over to the Internal Affairs Division, who conducted an investigation into two months of several months of overages and to text messages sent and received during working hours. The review showed that Quon sent a daily average of 28 text messages, most of which were personal. Consequently Quon was disciplined for a work rule violation.

- Claiming a violation of his 4th Amendment Right to Privacy, Quon sued the city. The district court ruled that Quon had a 4th Amendment expectation of privacy in the content of his text message and ordered a jury trial to determine whether the purpose of the OPD's review was reasonable under the circumstances. The jury determined that the purpose was to determine whether the OPD's character limit was sufficient, and, therefore, it was a reasonable search under the 4th Amendment.

- On appeal the 9th Circuit Court of Appeals reversed in part, agreeing that Quon had a 4th Amendment expectation of privacy in the content of his text messages, but holding that the search was not reasonable under the circumstances, even though it was done with a legitimate work-related purposes. The U.S. Supreme Court reversed the Court of Appeals, holding that the city's policy and OPD directive made clear that city employees had no expectation of privacy or confidentiality when using city computers, including text messages.

- The Supreme Court ruled that a government employer's search, when conducted for non-investigatory, work-related purposes or for investigations of work-related misconduct, is reasonable (1) if the search is justified at its inception, (2) if measures adopted are reasonably related to the objective of the search, and (3) if the search is not excessively intrusive in light of the circumstances giving rise to the search.

- Applying those criteria to the instant case, the Court held that (1) the search was justified at its inception because the OPD was trying to determine whether Quon was paying for work-related text messages, (2) the scope was reasonable because it was the most efficient and effective way to determine whether Quon's overages were work-related or personal, and that (3) the search was not excessive because the OPD reviewed only two months of text messages and only reviewed working-hour usage.

- Finally, the Court noted that even if Quon had a limited expectation of privacy in his personal text messages, it was not reasonable for him to assume that they would never be subject to scrutiny. As a police sergeant, Quon should have known that his communications could be subject to discovery in litigation, to audits, and to public records requests.

- The 7th Circuit Court of Appeals has held the employees of a private employer have no reasonable expectation of privacy in information stored on employer-issued laptops, because of the employer's announced policy that it could inspect the laptops it furnished for employee use. *Muick v. Glenayre Elecs.*, 280 F.3d 741, 743 (7th Cir. 2002).

Metadata

- Metadata is data about data. For example, looking at the metadata of an e-mail can reveal when it was sent, when it received, and who looked at it. Whereas looking at the metadata of Microsoft Word documents can reveal deleted language, as well as when the document was accessed and by who.

- No published Wisconsin appellate court decisions have yet ruled on whether metadata is a record subject to disclosure under the Public Records Law, however in *McKellar v. Prijic*, No. 09-CV-61 (Wis. Cir. Ct. Outagamie County, July 29, 2009), a Wisconsin Circuit Court held that metadata was not a record subject to disclosure.

  - After filing a public records request for a letter, a requester filed suit, claiming that he was entitled to the metadata associated with the letter, which he could not access due the letter being provided in a PDF format. The Court disagreed, finding that because metadata includes drafts, notes, preliminary computations and editing information, the intent and purpose of the Public Records Law are not served by including metadata preparatory material, and metadata is not part of the public record.

- Arizona and Washington have ruled that metadata is a record subject to disclosure:

  - In *Lake v. City of Phoenix*, 218 P.3d 1004 (Ariz. 2009), the Supreme Court of Arizona ruled that an electronic version of a record, including any embedded metadata, is subject to disclosure under Arizona's Public Records Law. The Court defined metadata to include information describing the history, tracking or management of an electronic document; including information on creation and edit dates, authorship, comments and edit history.
    - The metadata at issue in this case was embedded in the electronic version of a police supervisor's notes on a police officer's work performance.

  - In *O'Neill v. City of Shoreline*, 240 P.3d 1149 (Wash. 2010), the Supreme Court of Washington ruled that embedded metadata is a public record subject to disclosure under Washington's public records law. The Court held that Washington's "broad [public records statute] exists to ensure that the public maintains control over their government," and that they would not deny their citizenry access to a whole class of possibly important government information.
    - The metadata at issue in this case revolved around an e-mail forwarded to a deputy mayor, who then destroyed the metadata (she claims inadvertently).

- A number of lower courts from other out of state jurisdictions have also ruled on this issue:

– In *Irwin v. Onondaga County Resource Recovery Agency*, 895 N.Y.S.2d 262 (App. Div. 2010), the Appellate Division of the New York Supreme Court held that certain metadata associated with a public records request is subject to disclosure. The court defined metadata as "secondary information" not apparent on the face of a document that describes an electronic document's characteristics, origins and usage. Examples cited included the file name, file location, format, size, dates and file permissions. The court defined 3 types of metadata

> (1) "substantive metadata" or "application metadata," which is information created by the software used to create the documents, reflecting editing changes, comments and instructions concerning font and spacing;
>
> (2) "system metadata," which includes automatically generated information about the creation or revision of a file, such as its authorship or the date and time it was created or modified; and
>
> (3) "embedded metadata," which includes metadata that is inputted into a file by its creators or users but cannot be seen on the document's display.

The court held that "system" metadata, "the electronic equivalent of notes on a file folder" indicating when a document was stored, created or filed, is a "record" subject to disclosure under New York's Public Records Law. The court made clear that it was not ruling on whether metadata of any other nature would be subject to disclosure under the same law.

- In *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio.St.3d 139 (2012), the Ohio Supreme Court held that metadata is not inherently part of a record, and that any records request for a specific document must explicitly include a separate request for metadata if it desired. The court did not rule on whether metadata was a record subject to disclosure.

- The inconsistent definitions and range of information that metadata encompasses presents a challenge in the context of Public Records Laws. Requesters have to be reasonably specific in their requests. A custodian should not have to guess at what records a requester desires. *Seifert v. Sch. Dist. Of Sheboygan Falls*, 2007 WI App 207, ¶ 42. In light of the law on specificity, the lack of a clear definition of what constitutes metadata makes it difficult to for a records custodian to respond to these types of request.

Databases

- A Database is a large collection of data organized so it can be easily accessed, managed and updated. Access to the data is usually provided by a database management system, integrated computer software that allows users to interact with the data in the database. Because of their close relationship the term “database” is often used casually to refer to both a database and the database management system used to manipulate it.

- The Attorney General has advised that where information is stored in a database a person can “within reasonable limits” request a data run to obtain the requested information.” Use of a rule of reason is advised to determine whether retrieving electronically stored data entails the creation of a new record, considering the time, expense and difficulty of extracting the data requested, and whether the agency itself ever looks at the data in the format requested.

- The Public Records Law does not require an authority to create a new records by extracting information from existing records and compiling that information in a new format. To the extent that data can be pulled from a database in a reasonable manner, the Wisconsin Supreme Court has held that a PDF copy of the requested data is acceptable. *WIREdata* at ¶¶ 66, 68. An authority is not required to compile or collect statistics for the benefit of a requester. *George v. Records Custodian*, 169 Wis.2d 573 (Ct. App. 1992).

- For shared-access databases involving multiple agencies, the attorney general recommends that the establishment of such a database be accompanied by detailed rules identifying who may enter information and who is responsible for responding to requests for particular records.

- A requester is not entitled to obtain access to an authority's electronic database. Granting direct access to the electronic database of an authority poses substantial risks. Confidential data that is not subject to disclosure under the Public Records Law might be viewed or copied, or the database itself might be damaged, either inadvertently or intentionally. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 97.

Contractor's Records

- The definition of "Record" also includes contractors' records. Authorities must make available for inspection and copying any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority. Wis. Stat. § 19.36(3).

- Put another way, records produced or collected, created or maintained under a contract for a government body, by a contractor, are considered public records, just as though they were in a public official's custody. Records cannot be shielded from the public by keeping them in a contractor's custody.

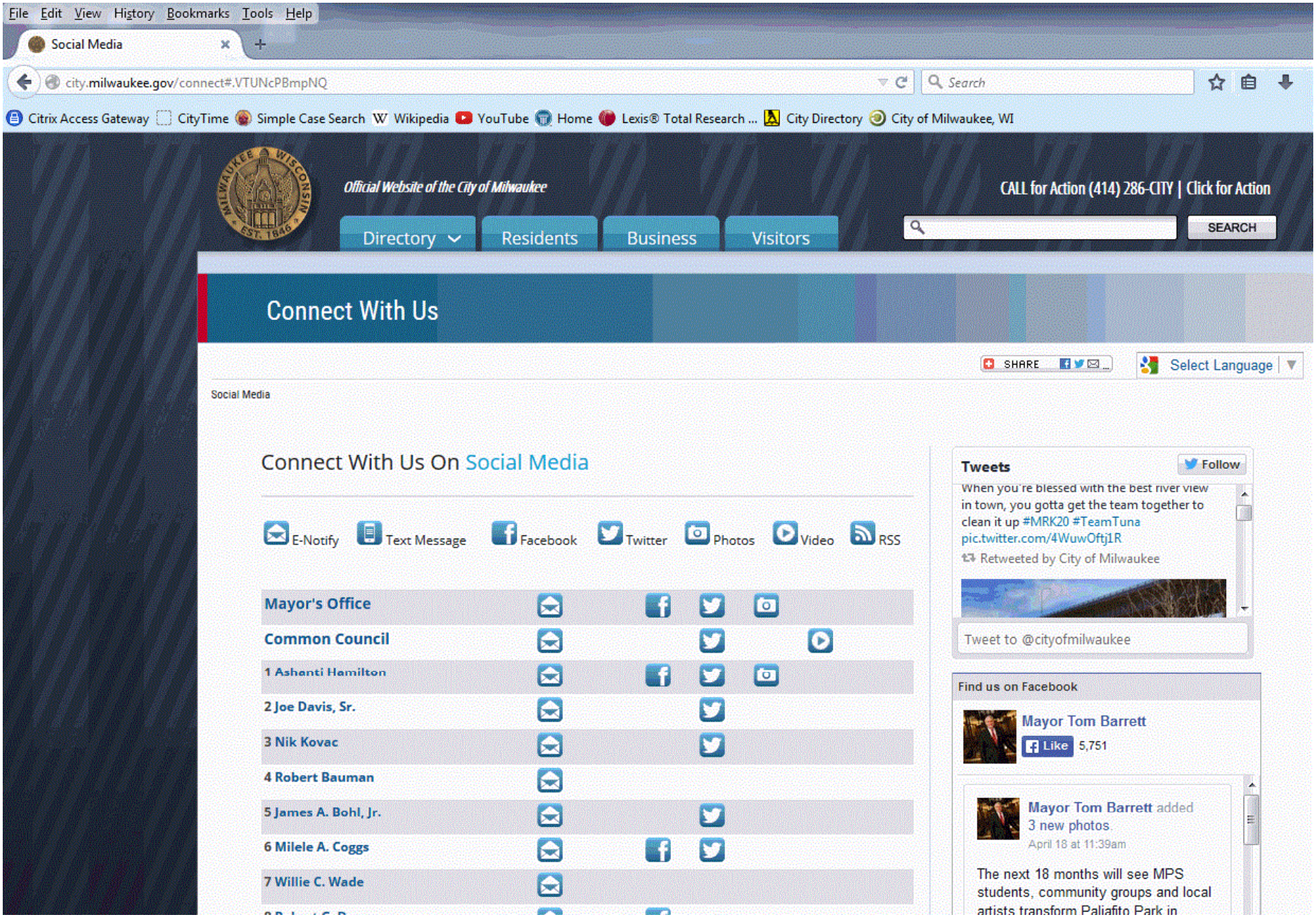
- The rules related to an authority's electronic records apply equally to the the electronic records of a contractor, to the extent that the requested records were kept or created pursuant to the contract.
  - Contractor employee records are protected form disclosure, except for wages and hours information. Wis. Stat. § 19.36(12).

Inspection of Electronic Records

- A requester may demand the electronic record by provided in its original format. A request for a copy of in a digital form is not met by providing an analog copy. *State ex rel. Milwaukee Police Association v. Jones*, 2000 WI App. 146.

- Wis. Stat. § 19.35(1)(k) permits an authority to impose reasonable restrictions on the manner of access to original records if they are irreplaceable or easily damaged. In those cases, providing a copy of the requested record "in an appropriate format" is sufficient. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 97.

- The Attorney General has advised that agencies may not use online record postings as a substitute for their public records responsibilities. That said, providing public access to records via the Internet can greatly assist agencies in complying with the Public Records Law by making posted materials available for inspection and copying, as this form of access may satisfy requesters.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6 Milele A. Coggs	✉	f	🐦		
7 Willie C. Wade	✉				
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9 Robert W. Puente	✉				
10 Michael J. Murphy	✉	f			
11 Joe Dudzik	✉				
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13 Terry L. Witkowski	✉				
14 Tony Zielinski	✉	f	🐦		
15 Russell W. Stamper, II	✉				

City Clerk - Jim Owczarski				🐦	
City Channel				🐦	▶
Milwaukee Youth Council			f	🐦	▶
Department of City Development	✉		f	🐦	
Fire and Police Commission	✉		f	🐦	
Milwaukee Police Department	✉		f	🐦	▶
Department of City Development	✉		f	🐦	
Fire and Police Commission	✉		f	🐦	
Milwaukee Arts Board	✉		f	🐦	
Milwaukee Health Department			f	🐦	▶
Milwaukee Police Department	✉		f	🐦	▶

The next 18 months will see MPS students, community groups and local artists transform Paliafito Park in Walkers Point into a vibrant Eco-Arts education center. I look forward to seeing the completed project.

Facebook social plugin

Tweets Follow

Mayor Tom Barrett @MayorOfMKE 18 Apr

The transformation of Paliafito Park into an Eco-Arts center has begun. pic.twitter.com/AIngVBCBTz

Expand

Mayor Tom Barrett @MayorOfMKE 16 Apr

MKE's annual Project Clean & Green is underway. For more info on how you can

- Providing a copy of an electronic document that is “substantially as good” as the original is a sufficient response in situations where the requester does not specify a format.

- Computer programs are expressly protected from examination or copying even though material used as computer input or produced as output may be subject to examination and copying unless otherwise exempt from public access. Wis. Stat. § 16.971(4)(c).

- Should the requester want to inspect the records instead of receiving copies, an authority must provide the requester with facilities comparable to those used by its employees in which to inspect the records during established business hours. Wis. Stat. § 19.35(2).
  - An authority can require that a requester show acceptable identification if the requested record is kept in a private home, or if federal law or regulations require. Wis. Stat. § 19.35(1)(i)
  - An authority may also impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged. Wis. Stat. § 19.35(1)(k).
  - An authority is not required to purchase photocopying, duplicating, photographic, or other equipment, or to provide a separate room for inspection or copying. Wis. Stat. § 19.35(2).


TO DEFEND AGAINST LAWSUITS, OUR RECORDS RETENTION POLICY HAS BEEN UPDATED TO INCLUDE THIS...
BAM!
WHAT WAS I TALKING ABOUT?
THE RECORDS RETENTION POLICY.
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Records Retention

- The retention of state public records, including electronic records, is covered by Wis. Stat. § 16.61. There are also specific provisions relating to the storage of electronic records in Wis. Stat. § § 16.611 and 16.612, which give the Wisconsin Department of Administration (DOA) rulemaking authority to prescribe minimum retention periods for records and standards for electronic-record storage for state and local agencies.

- Wis. Stat. § 19.21(4) allows municipalities to establish by ordinance the time period for destruction of obsolete public records. Accordingly, authorities should prepare a policy concerning electronic-record retention and destruction. The policy should emphasize that e-mail records are subject to the same retention scheduled under the Public Records Law as hard copies of records would be.

- All e-mails that concern government business should be kept and maintained by the originator in a manner that is accessible to the public, in the event that a public-records request is made for a pertinent e-mail message.

  - This requirement also applies to messages sent and received on public officials' and employees' personal computers, if the messages discuss matters within the official's or employee's public duties. This can be done either by printing a hard copy of the e-mail message and filing it appropriately, or by creating folders on the user's computer e-mail system.

  - Some governmental boards' or bodies' policies direct that e-mail not be used for conducting the business of the board or body. Make sure to familiarize yourself your agency's policies on this matter.

- The Department of Administration has established a set of standards and requirements for electronic records management. Wis. Admin. Code ch. Adm 12. Purpose of the rules is to ensure that public records that are in an electronic format are preserved, maintained, and remain accessible for their designated retention period. These rules only apply to records stored exclusively in electronic format.

– The rules mandate that all statutes and rules relating to public records in general also apply to electronic records. For public records stored exclusively in electronic format, authorities must do the following:
  - (1) Maintain electronic public records that are accessible, accurate, authentic, reliable, legible and readable through the record life cycle;
  - (2) Create policies, assign responsibilities, and develop appropriate formal mechanisms for creating and maintaining electronic records through the record life cycle;
  - (3) Maintain confidentiality or restricted access to records maintained exclusively in electronic format;
  - (4) Utilize information systems that accurately reproduce the records they create and maintain;
  - (5) Describe and document public records created by information systems;
  - (6) Document and authentication for the creation and modification of electronic records and, when required, ensure that only authorized persons create or modify the records;
  - (7) Design and maintain new information systems that provide official copies of records;
  - (8) Develop and maintain information systems that maintain accurate linkages, electronically or by other means, to supporting transactions and documents if the linkages are essential to the meaning of a record;
  - (9) Utilize information systems that produce records that continue to reflect their meaning throughout the record life cycle;
  - (10) Create information systems that can delete or purge electronic records in accordance with the approved retention scheduled;
  - (11) Use information systems that can export records to other systems without destruction or loss of meaning;
  - (12) Utilize information systems that can output record content, structure, and context; and
  - (13) Use information systems that allow for redaction of confidential information or information that is exempt from disclosure under the Public Records Law.

Wis. Admin Code § 12.05

Why Not Retain Everything Forever?

- Maintaining data is not cheap. Besides buying storage space, which by itself may be cheap, you still have to deal with costs of the system that's running the storage device, the buildings they sit in, the energy required to run and cool them, the licenses for software and maintenance, the back-up process required, and the people to manage it.

- It makes it more difficult to respond to records requests. Instead of looking in a limited number of places for requested records, custodians now have to also go through records that should have been purged by weren't, increasing workload and tying up employee time that could be better allocated. It also potentially lengthens the amount of time that it takes to respond to the request.

- Too many data could overwhelm "search" functionality; slowing down databases and making it harder to comply with requests in a timely manner.