

## CHAPTER 37

### INFORMATION PRACTICES

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**37.01 Purpose.** (1) This ordinance is intended to provide access to public records and to establish a retention schedule that authorizes the destruction of county records. This ordinance establishes procedures required to access public records and establishes minimum retention periods. This ordinance shall be construed with a presumption of public access, consistent with the conduct of governmental business. Denying access to records is contrary to the public interest unless exceptional reasons support denial. Sauk County adopts and incorporates the provisions of Wisconsin's Public Records Laws, Wis. Stats. §§ 19.21 to 19.39, inclusive of all future amendments and revisions.

(2) Records custodians may destroy a record prior to the time set forth in the schedule only if such a record has been reproduced as an original record in accordance with Wis. Stats. §§ 16.61(7) and 16.612. Storage of public records in electronic format shall comply with the requirements, standards, and guidelines set forth in Wis. Adm. Code § Adm 12.05. Any record not covered by this ordinance or any other regulation of law shall be maintained 7 years in accordance with Wis. Stat. § 19.21(5)(c). Records custodians are instructed to destroy non-records when they are no longer needed or useful. The following is intended to supplement, not to replace or supplant, the Wisconsin Public Records Law.

**37.02 Historical records.** The State Historical Society of Wisconsin has waived the required statutory 60-day notice under Wis. Stat. § 19.21(5)(d), for any record marked "Waived," waived notice, on the State of Wisconsin Public

Records Board's General Schedules for County Governments. The State Historical Society of Wisconsin must be notified prior to destruction of a record marked "Notify," non-waived. Notice is also required for any record not listed in this ordinance. "N/A" or "P" indicates not applicable and applies to any county record designated for permanent retention.

**37.03 Definitions.** For the purposes of this ordinance, certain words and terms are defined as follows:

(1) "Authority" means any of the following entities having custody of a record and constituting a part of Sauk County government, or being attached for administrative purposes to Sauk County government: an office, elected official, agency, department of a public body corporate and politic created by constitutional law, ordinance, rule, or order; or a formally constituted subunit of the foregoing.

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes all items identified in Wis. Stat. § 19.32(2). "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 the custodian's office; materials to which access is limited by copyright, patent, or bequests; 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.

(3) “Legal Custodian” means:

(a) An elected official who is elected to a county office that oversees a department of the county. The official may designate an employee of the office to act as the legal custodian for records pursuant to Wis. Stat. § 19.33(1).

(b) Unless otherwise specifically provided, the county clerk or the clerk’s designee shall act as legal custodian for the county board and for any committees, commission, boards, or authorities created by ordinance or resolution of the county board. In general, the county clerk will act as legal custodian with respect to notices and minutes of the county board, its committees and commissions, boards, or authorities; other records concerning the departments or activities within the jurisdiction of committees, commissions, or authorities, shall generally be maintained by the elected official, department head, or chief administrative officer of the departments or activities.

(c) For every authority not specified in pars.

(a) or (b), supra, the authority’s chief administrative officer is the legal custodian for the authority; the administrative officer may designate an employee of the officer’s staff to act as the legal custodian.

(d) The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this ordinance. Each authority shall provide the name of the legal custodian and a description of the nature of the legal custodian’s duties under this subchapter to all employees of the authority entrusted with records subject to the legal custodian’s supervision. Each legal custodian shall name a person to act as legal custodian in the legal custodian’s absence or the absence of the legal custodian’s designee. This subsection does not apply to members of the county board.

#### **37.04 Procedural information and notice to public.**

(1) Each authority, in accordance with Wis. Stat. § 19.34; shall adopt, prominently display, and make available for inspection and copying at its offices for the guidance of the

public; a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records and the costs thereof. This subsection does not apply to members of the county board.

(2) Each authority, as defined in sub. 37.03(1), supra, shall promulgate the notice required under this subsection, file a copy of its notice with the county clerk, and display a copy of the notice at its own offices. This subsection does not apply to members of the county board.

#### **37.05 Treatment of certain data as records.**

The Wisconsin Public Records Law provides limited guidance as to whether the raw and perishable data of the following technologies qualify as records that must be maintained. This ordinance provides the following status of these technologies:

(1) E-MAIL. The data in an e-mail message may constitute a public record and is subject to maintenance as a public record. The data in an e-mail is subject to the same analysis under the public records statutes as an equivalent paper or hard copy record. Management information systems is responsible for ensuring that all e-mails are properly preserved for analysis.

(2) VOICE-MAIL. A voice-mail message is not a public record and voice-mail messages do not have to be maintained as public records. These messages are the functional equivalent of phone conversations. Phone conversations are not public records. Additionally, voice-mail messages share many of the attributes of “personal notes” which are not public records. Voice-mail messages cannot be indexed or maintained in any manner that would allow for their easy classification, searching, or retrieval making retention impractical.

(3) INSTANT MESSAGING AND TEXT MESSAGING. Except as set forth in this paragraph and in sub. 37.05(10), infra, the data involved in instant messaging and text messaging communications is not subject to maintenance as a public record. Instant messaging and text messaging have all of the attributes of instantaneous exchange of ideas as does a

regular telephone conversation. The data exchange has the same technological issues regarding capturing and storage of data that is present with voice-mail. An additional concern is that the raw data is often briefly stored or not stored at all by third party vendors or hosts that provide these services. This technology is closer to a true telephone conversation than are voice-mails. County employees and officials shall refrain from using instant messaging and text messaging for official communication purposes, or for matters that would result in a public record if another format such as e-mail or written communication were employed, unless the employee or official preserves a copy of the instant messaging or text messaging communication by any of the following means:

(a) Copying the communication to their email account.

(b) Downloading the communication to a county computer.

(c) Making a computer file of the communication.

(d) Printing and retaining a copy of the communication.

**(4) VOICE OVER THE INTERNET PROTOCOL.** The county does not monitor nor record the data associated with the conversations that occur over voice over the internet protocol. These conversations are the same real time voice communications as standard telephone conversations that are not public records. The only difference between these communications is the medium employed in transmitting the voice communications from one participant in the conversation to all others involved in the conversation.

**(5) AUDIO, VIDEO, DATA TRANSMISSIONS, AND COMMUNICATIONS.** The county does not routinely copy the data, nor maintain records of audio, video, data and radio transmissions and communications that may be processed through county computer. When the county copies, records, or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and must be maintained according to the appropriate records retention schedule. The Sauk County 9-1-1 center is the custodian for police and fire radio communications.

**(6) AUDIO AND VIDEO RECORDINGS.** Unless otherwise provided in this ordinance, public records are subject to requests and must be maintained according to the retention schedules published in this ordinance.

(a) *Rewritable Recording Systems.* Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory, do not constitute a record unless the recordings are further downloaded, printed, or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed, or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs or protocols may dictate, can be overwritten, erased, or otherwise destroyed. If such data is downloaded, printed, or separately preserved, it shall be treated as a record and shall be retained in accordance with the retention schedules.

(b) *Recordings Made for Preparing Minutes of Meetings.* In accordance with Wis. Stat. § 19.21(7), any tape recording of a meeting, as defined in Wis. Stat. § 19.82(2), by any government body as defined by Wis. Stat. § 19.82(1), may be destroyed, overwritten, or recorded over no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to take minutes of the meeting.

**(7) ELECTRONIC DOCUMENT FILES.** Where records, as that term is defined in Wis. Stat. § 19.32(2), exist only in an electronic format, the electronic records shall be maintained according to the appropriate retention schedule. Where both hard copy and electronic copies of a record exist, they shall each be subject to public records requests. When the custodian has designated electronic records as the official records, only an electronic copy shall be retained and made available for inspection under the public records laws. Where the custodian has not made such a designation, only the hard copy shall be subject to inspection as a public record and the electronic copies shall be treated and disposed of as draft documents that do not need to be maintained beyond creation of the final hard copy.

**(8) ELECTRONIC LOGS AND TEMPORARY DATA FILES.** Electronic logs and temporary data files provide detailed information about the design and functionality of the county's computer network. These logs are routinely overwritten on a daily basis due to the high volume of traffic that is being logged. Unrestricted access to these logs and files would constitute a breach of system security and leave the system vulnerable to exploitation and hacking. In order to ensure network security, these logs are available to the MIS coordinator's authorized staff only. These determinations apply to the following types of logs and data files:

(a) *Syslogs for Network Electronic Devices.* All logs created by network devices such as firewalls, routers, and switches, which are used for monitoring and trending computer network traffic patterns or detecting unauthorized network traffic, or both.

(b) *Network Server Security, Application, and Event Logs.* These logs are used to monitor activity on county network servers including successful and unsuccessful login attempts, file system access, and hardware performance. These logs provide detailed information about county network account ID's, file system structure, and hardware profiles.

(c) *Network Security Appliance Logs.* All logs created by network security devices such as the anti-virus appliance, anti-SPAM appliance, and content filtering appliance, which are used to monitor specific types of unauthorized or malicious traffic on the county network. These logs identify specific network traffic patterns and protocols that are allowed or disallowed on the county network.

(d) *Application Logs.* These logs are used to monitor activity on various database applications; they do not contain specific audits of database transactions. These logs may contain version information, program variables, and programming logic.

**(9) EMERGING TECHNOLOGIES AND RECORDS RETENTION.** (a) As new information technologies emerge, the management information systems coordinator (MIS coordinator) shall evaluate these technologies and their benefit to county operations. The MIS coordinator shall consider whether any of these

technologies provide the capacity to archive public records created by these technologies. Whenever it is economically and practically feasible to archive records created by emerging technologies, archiving shall be incorporated into any deployment of the technologies.

(b) Whenever the technologies do not provide for such archiving capabilities, the MIS coordinator shall consider whether the benefits of employing such technologies outweigh the risks that some public records may not be retained by deployment of the technologies. Where benefits outweigh the risks, county employees shall refrain from using new technologies for official communication purposes or for matters that would result in a public record if another format such as e-mail or written communication were employed. In the event that newly emerging technologies are used for communication purposes, the employee shall preserve a copies of these communications by any of the following means:

1. Copying communications to their email account.
2. Downloading communications to a county computer.
3. Making a computer file of the communications.
4. Printing and retaining copies of the communications.

The MIS coordinator shall also ensure that, as soon as practical and economically feasible, archiving systems are obtained for any information technology that is deployed without an archiving system.

**(10) USE OF TECHNOLOGIES TO AVOID THE DUTY TO PRESERVE PUBLIC RECORDS IS PROHIBITED.** No employee shall use or employ any form of communication or information technology with the intent or design to circumvent the records retention requirements of this ordinance. Text Messaging shall not be used in lieu of e-mail to share or create a public record unless the employee complies with the provisions of sub. 37.05(3), supra.

**37.06 Access to public records.** (1) The rights of any person who requests inspection or copies of a record are governed by the provisions of Wis. Stat. § 19.35(1).

(2) Each authority shall provide any person who lawfully requests to inspect or copy a record which appears in written form, or who requests to photograph a record that is only available in a form that does not permit copying, with facilities comparable to those used by its employees in order for the requesting person to inspect, copy, abstract, or photograph the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic, or other equipment or to provide a separate room for the inspection, copying, abstracting, or photographing of records.

(3) Each authority, upon request for any record, shall as soon as practicable and without delay, either fill the request or notify the requestor of the authority's determination to deny the request in whole or in part and the reason for denial of the request. An oral request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requestor within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requestor shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requestor that if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Wis. Stat. § 19.37(1), or upon application to the attorney general or a district attorney.

**(4) FORMAT FOR DELIVERY OF RECORDS.**

(a) Except as otherwise provided by law, any requestor may receive or inspect a record in the same format in which the county maintains the record. Whenever it is necessary to redact or excise portions of a record in order to comply with the Wisconsin Public Records Law, the redactions shall be made with the assistance of the MIS department. Whenever electronic redaction or excisions cannot be done in a secure manner that preserves such redactions and prevents the viewing of the redacted information, such redactions should be made by hand, not electronically, and the requestor shall only receive a hard copy, not an electronic copy, of the redacted record. A requestor may not be

charged for the time necessary to review a record or to redact or excise non-releasable materials.

(b) When practicable, records may be e-mailed to the requestor or provided by a media storage device. In order to ensure the integrity of county records, any e-mailed document shall be converted to a secure format prior to sending the document to anyone outside of the county government. There shall not be any reproduction charge for e-mailing records, however, such records may still be subject to payment of a location fee as established in Wis. Stat. § 19.35(3)(c).

**(5) SPECIAL RULES REGARDING REPRODUCTION OF E-MAIL RECORDS.** (a) E-mails dated January 1, 2011, or before were not stored in an archive. The restoration and location of these e-mails is difficult and labor intensive. Such requests often take more than 30 days to comply with due to labor and technical issues. Custodians who receive requests for these records should inform the requestor of these issues. Such requests must be immediately forwarded to the MIS coordinator who may prepare an estimate of the actual, necessary, and direct cost of locating such records and the MIS coordinator shall provide technical assistance to the custodian.

(b) All Sauk County e-mail transactions dated January 1, 2011, or later have been preserved in a searchable data archive, subject to retention as provided in this ordinance. When requests are made for such records, custodians shall clarify with the requestor, the various search terms and e-mail boxes that the requestor would have the county search. Once the requestor has specified search terms, the custodian shall contact the MIS coordinator for technical assistance in fulfilling the request.

(c) E-mails are often sent to multiple recipients creating a chain. A requestor will be provided with one copy of an e-mail and all responses to that e-mail. Unless a requestor specifically requests otherwise, the requestor will not be provided with multiple copies of an e-mail showing receipt by each of the designated e-mail recipients.

**(6) TIME FOR COMPLIANCE AND PROCEDURES.** (a) The fulfillment of public records requests is a high priority for the county.

Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requestor of the custodian's determination to deny the request in whole or in part and the reason for the denial. If a request may take more than 10 business days to process, then the custodian must respond to the requestor within those 10 days with an estimate of when the processing will be completed and with an explanation of the reason supporting that estimate.

(b) Before any custodian may deny access to any records or portion of a record, the custodian must consult with the corporation counsel. The consultation shall occur as soon as practicable after the custodian has assembled and reviewed the requested records. In any response to a requestor, the custodian shall include a statement that the corporation counsel was consulted regarding the denial of access to the requested records. Any denial of access made by a custodian without such consultation and statement is not considered a response from Sauk County.

(c) The county shall maintain a procedure whereby individuals may inform the county that their safety may be endangered by the release of otherwise available public records and whereby individuals may request that records be maintained as confidential records. The office of the corporation counsel and MIS shall work cooperatively to maintain the necessary procedures and policies to facilitate and respond appropriately to such communications.

(7) No custodian may destroy a record at any time after the receipt of a request for inspection or copying of a record until after the request is granted or until at least 60 days after the date that the request is denied. If any legal action is pending regarding or related to the record, the record may not be destroyed without the express authorization of the corporation counsel. No record that is the object of, or that has been produced in accordance with, a discovery order or a subpoena may be destroyed without the express consent of the corporation counsel.

**37.07 Form of request.** The Wisconsin Public Records Law dictates that certain actions must be taken regarding oral requests for records

and that certain more formal actions are taken in response to written requests for records. State law does not expressly explain how to respond to the following methods of communication. Therefore, requests made by the following means shall be responded to as follows:

(1) E-MAIL. A request made by e-mail may be responded to via e-mail or in writing and shall comply with all of the formalities as though the request was made in writing.

(2) VOICE-MAIL. A request made by voice-mail shall be responded to as though it were made orally.

(3) INSTANT MESSAGING AND TEXT MESSAGING. A request made in either such manner shall be treated as an oral request.

**37.08 Fees.** (1) Each authority shall impose a fee upon the requestor of a copy of a record. The imposed fee may not exceed the actual, necessary, and direct cost of reproduction and transcription of the record unless a fee is otherwise specifically established, or authorized to be established, by the law.

(2) Each authority shall impose a fee upon the requestor of a copy of a record for the actual, necessary, and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(3) Except as otherwise provided by law or as authorized to be prescribed by law, an authority shall impose a fee upon a requestor for locating a record, not exceeding the actual, necessary, and direct cost of location, if the cost is \$50 or more.

(4) Each authority shall impose a fee upon a requestor for the actual, necessary, and direct cost of mailing or shipping of any copy or photograph of a record that is mailed or shipped to a requestor.

(5) Each authority shall require prepayment by a requestor of any fee or fees imposed under this subsection if the total amount exceeds \$5. An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

**37.09 Separation of information.** If a record contains information that may be made public and information that may not be made public, the authority having custody of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. Each authority shall consult with the corporation counsel before releasing any information requiring separation under this subsection.

**37.10 Disposition.** (1) Each custodian may dispose of records when the minimum retention period expires.

(2) Sixty days prior to the destruction of records, written notice of destruction must be given to the Wisconsin Historical Society in accordance with Wis. Stat. § 19.21(5)(d). This does not apply to any record listed in the schedule and designated “waived”.

(3) Prior to the destruction of records, the custodian must determine if there is litigation, an audit, or a public records request pending. If so, place a “hold” on records and cease all disposition activity until:

(a) After a public records request is granted, or 60 days after a request is denied pursuant to Wis. Stat. § 19.35(5); or,

(b) Until any litigation or audit is fully and finally resolved.

**37.11 Microfilming of optical disk storage of department records.** (1) Departments may keep and preserve public records through the use of microfilm or optical disk storage providing that the applicable standards established in Wis. Stats. §§ 16.61(7) and 16.612 are met.

(2) Departments should consider factors such as retention periods and estimated costs and benefits of converting records between different media in deciding which records to microfilm or store on optical disk. Paper records converted to either microfilm or optical disk storage should be destroyed. The retention periods identified in this ordinance apply to records in any media.

**37.12 Retention schedule.** Sauk County hereby adopts the State of Wisconsin Public Records Board’s General Schedules for County Governments. The retention schedule can be

found at the Wisconsin Public Record Board’s website.

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Approved by the State of Wisconsin Public Records Board, August 16, 1995. Adopted by Sauk County Board of Supervisors, September 21, 1995. Amended by the Sauk County Board of Supervisors on October 21, 2003 – Ordinance No. 139-03. Repealed and Recreated by the Sauk County Board of Supervisors on December 16, 2014 - Ordinance No. \_\_\_\_ -14.