

Milwaukee Journal Sentinel (WI)

November 20, 2008

Audit finds records law isn't always followed 10% of requests in state were denied or ignored

PATRICK MARLEY Staff Milwaukee Journal Sentinel

Madison — Three in 10 requests made under the state's public records law were not properly fulfilled, according to a statewide **audit** released Wednesday by open records advocates.

In 30 cases — nearly 10% — requests for simple records were denied or ignored, according to the **audit** by the Wisconsin Freedom of Information Council and the University of Wisconsin-Madison School of Journalism and Mass Communication.

Of 317 requests, 228, or 72%, were fulfilled without problems; 30 were denied or ignored; and 59 were fulfilled with some problems. In some of those 59 cases, officials required requesters to identify themselves or say why they wanted the documents, even though the law allows people to anonymously request records.

"They should have done better," said Bill Lueders, president of the council. "We were asking for basic information that there shouldn't have been a lot of questions about."

The **audit** also found some communities charging as much as \$5 for a photocopy, despite state Department of Justice advice that "anything above 25 cents may be suspect." Those charges did not rile state Attorney General J.B. Van Hollen, however.

"If people choose not to follow our advice, I can understand that," Van Hollen said. "It's not a mandate."

But Van Hollen said he had "great concerns" about requests being ignored or improperly denied, and he said educating public officials was the best way to improve compliance. Van Hollen held five seminars around the state this fall about the public records law.

But Lueders said charging \$5 for a copy clearly violates a provision of the records law that says the government can charge only the "actual, necessary and direct" costs of making copies.

"If you're charging \$5 . . . you're clearly not complying with the letter of the law, and the attorney general should be willing to say so," Lueders said. "In an age where a Kinko's will make copies for 10 cents a page, no Wisconsin official should be charging \$5 or \$1 or 50 cents."

The Kenosha Police Department charged a requester \$5 for a first page and \$1 each for subsequent pages, the **audit** said. Other governments charged well over \$1 a page.

Journalists and other open records advocates made 317 requests in 65 counties in September and October to see how officials responded to requests for jail booking logs, police calls to high schools, legal fees for town boards and a day's worth of e-mails for mayors and city

administrators.

The 30-year-old law requires that records be released "as soon as practicable and without delay."

Requests to review jail booking records were denied in five counties, including Ozaukee County. In 16 other counties, sheriff's officials made requesters take steps in violation of the open records law, such as identifying themselves or explaining why they wanted records.

Jason Shepard, who coordinated the **audit**, said the difficulty acquiring jail records was disturbing because a 1999 **audit** by the same group found similar problems.

"We don't have secret arrests in this country, and the fact that citizens have difficulty accessing these logs throughout Wisconsin is a major concern," said Shepard, a PhD candidate in UW's journalism program.

In Ozaukee County, a deputy told the requester no one had ever asked for the jail booking log before. The sheriff's office offered to look up an individual by name but said the computer system could not generate the log for a specific date.

In Washington County, the requester had to provide a name to get the jail booking log. Problems also were encountered in Washington County in getting school and town records, and the West Bend Police Department did not provide records regarding calls to a high school.

But all records requested in Milwaukee and Racine counties were provided promptly and without incident, the **audit** found. In Waukesha County, one request met problems.

The Journal Sentinel and most other Wisconsin newspapers participated in the **audit**, as did volunteers around the state. The Milwaukee paper is represented on the Wisconsin Freedom of Information Council.

JSOnline.com

A copy of the **audit** is available at www.wisfoic.org/audit/. For a chart showing how each of the state's 72 counties complied with the requests, go to www.jsonline.com/wisconsin.

Copyright 2008, Journal Sentinel Inc. All rights reserved. (Note: This notice does not apply to those news items already copyrighted and received through wire services or other media.)