

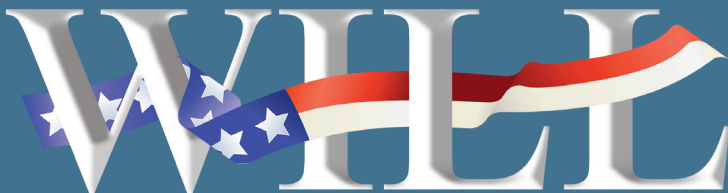
# Wisconsin Institute for Law & Liberty



## Let There Be Light

How long does it take Wisconsin's largest school districts to comply with open records laws?

Libby Sobiech  
Associate Counsel



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## Executive Summary

In 2016, Wisconsin Governor Scott Walker issued an executive order to state agencies, instructing them to use best practices when responding to open record requests from the public.<sup>1</sup> Among other things, the order required agencies to comply with “any small and straightforward [open records] requests within 10 business days of receipt, whenever it is practicable to do so.” The 10 day timeline was based on the Wisconsin Attorney General’s Open Records Compliance guide that recommends a response time of 10 business days for “a simple request for a limited number of easily identifiable records.”<sup>2</sup> This guide applies to all government entities that reply to open records requests, including school districts and municipalities. From a good government standpoint, this makes sense; open and transparent government allows the people to hold their elected officials accountable and better understand how their tax dollars are being spent. As former U.S. Supreme Court Justice Louis Brandeis quipped, “*Sunlight is said to be the best of disinfectants.*”

But Walker’s executive order did not – and could not – extend to K-12 public school districts. Arguably, these government entities are the most important in our state, whose practices impact well over 90% of our children’s education. Unfortunately as WILL and others have experienced, some of these school districts are the worst offenders of state law, often stonewalling, delaying, or even refusing the turnover of public documents.

This prompted us to test how long it takes Wisconsin’s largest school districts to respond to open records requests. By asking for documents reflecting how the certain districts reply to open records requests, we were able to calculate, over a two-year period, how many days it took twelve school districts to comply with those requests.

Our data shows, among other things, that while Milwaukee Public Schools received the most open records requests, it took them an astonishing 30 business days, on average, to respond to requests. On the other hand, some districts, like Racine Unified, responded to open records requests within an average of 10 business days. Of the twelve large school districts we surveyed, only six districts had an average response time of around 10 days (which is recommended by the state Attorney General). Unfortunately, Madison Metropolitan School District does not keep track of how they comply with open records requests and therefore required a fee of over \$1,000 to create it.

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<sup>1</sup> Wisconsin Office of the Governor, executive order #189, March 11, 2016.

<sup>2</sup> Wisconsin Attorney General, Wisconsin Public Records Law Compliance Guide, 2015, page 15.

## **Methodology**

Our goal was to obtain the school district's tracking document of open requests received and then determine the number of business days it took a district to comply with the request. State agencies are required to maintain a tracking document but municipalities are not.

Municipalities must abide by state open records laws, which requires that they, "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 reasons therefore." Wis. Stat. § 19.35(4)(a).

We submitted the following open records request to the 20 largest school districts in the state:<sup>3</sup>

1. *All reports and/or documents that track and record the open records requests received by [school district], including both written and non-written requests, and the date of the district's final response to the requestor, since August 1, 2015 to the date this request is fulfilled.*
2. *All district policies and/or administrative rules regarding open records requests.*
3. *All job descriptions for employees of the [school district] that include the responsibility to respond to open records requests.*

*If the [school district] does not track open record requests or create statistical reports on open records requests, fulfill the following request:*

*All open records requests, including both written and non-written requests, made to the [school district] and the letter or email of the final response to the requestor by the district, since August 1, 2015 to the date this request is fulfilled.*

All 20 school districts responded to our open record requests but only 12 districts agreed to fulfill our request without a fee. We decided not to pay any fee and therefore only studied the districts that provided us documents free of charge.<sup>4</sup> Three of the 12 districts did not have a tracking document in place so we reviewed the open records documents and created a tracking document for the requests.<sup>5</sup>

In addition, in order to provide a better comparison to Milwaukee Public Schools, the largest school district, we also submitted the same open records requests to state agencies that received a similar number of open records requests:<sup>6</sup> the state Department of Public Instruction, Department

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<sup>3</sup> Milwaukee, Madison, Kenosha, Green Bay, Racine, Appleton, Waukesha, Eau Claire, Sheboygan, Janesville, Oshkosh, West Allis-West Milwaukee, Wausau, Sun Prairie, Fond du Lac, Stevens Point, Wauwatosa, Elmbrook, Beloit and Middleton-Cross Plains.

<sup>4</sup> The following school districts requested a fee to receive the records requested: Kenosha, Sheboygan, Madison, Eau Claire, Wausau, Wauwatosa, and Elmbrook. We did not pay for records because we wanted to compare the districts as equally as possible. Since the districts varied in the amount of money it would cost, we removed those districts from the analysis. We did not use the Beloit School District open records request information due to incomplete data.

<sup>5</sup> The following school districts did not have a tracking document for open records requests so we created the tracking document of the requests: Janesville, Fond du Lac and West Allis – West Milwaukee

<sup>6</sup> Matthew DeFour, *State Agencies responding more quickly to record requests since last year*, Wisconsin State Journal, March 12, 2017, <http://host.madison.com/wsj/news/local/govt-and-politics/state-agencies-responding-more->

of Veterans Affairs, and Department of Natural Resources. For a similar purpose, we submitted the same open records requests to other Milwaukee municipalities – the Milwaukee Mayor<sup>7</sup> and Milwaukee County Executive.

Then, for each government entity, we calculated the response rate for open records requests completed. We compiled and analyzed more than 8,000 open record request log entries. This was done by using an Excel spreadsheet to record the date the request was made and the date of the last communication sent by the government entity.<sup>8</sup> Requests were only counted if there was an initial request date and a final response from the district.<sup>9</sup> We counted the number of business days between the two. The average response rate was calculated taking the number of business days divided by the number of requests within each year.<sup>10</sup>

We also documented the number of district employees whose job description included completing open record requests. If provided the information, we also recorded the number of requests that required a fee. However, not all school districts tracked that information so it was not possible to use fees as a measurement for complexity.

## Results

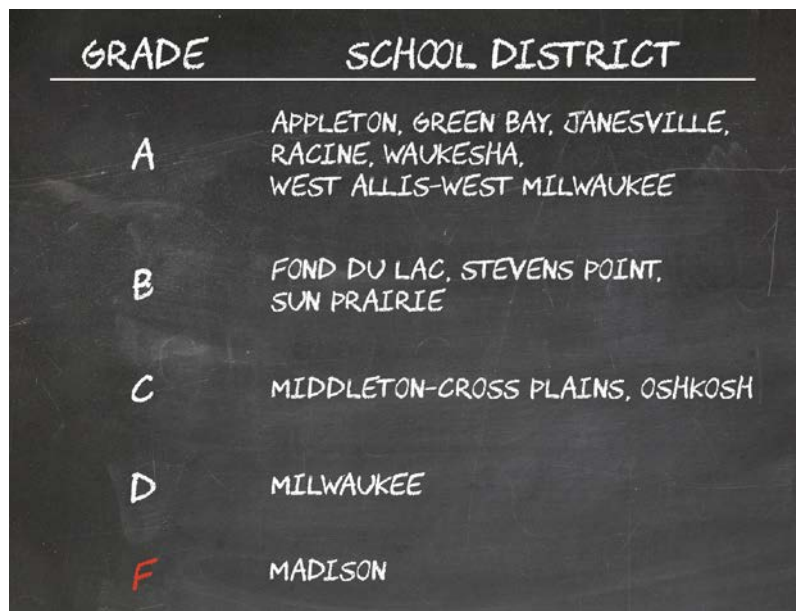
The results are located in Appendix A, showing for a two year period, the number of requests, average response rate, and number of employees working on requests for twelve school districts, three state agencies, and the Office of the Milwaukee County Executive.

Based on our study, we drew the following conclusions:

### **1. School districts are not consistent in following best practices for responding to open records requests.**

Using the Wisconsin Attorney General's 10 business day recommendation for response time as a guide, we graded the twelve school districts that responded based on their average response rates.

An "A" grade was given to school districts that responded, on average, within 10 business days or less. Districts who



GRADE	SCHOOL DISTRICT
A	APPLETON, GREEN BAY, JANESVILLE, RACINE, WAUKESHA, WEST ALLIS-WEST MILWAUKEE
B	FOND DU LAC, STEVENS POINT, SUN PRAIRIE
C	MIDDLETON-CROSS PLAINS, OSHKOSH
D	MILWAUKEE
F	MADISON

[quickly-to-records-requests-since-last/article\\_0cbcf330-098e-5329-ac21-247b274430cc.html](http://quickly-to-records-requests-since-last/article_0cbcf330-098e-5329-ac21-247b274430cc.html) This article identified how many requests each state agency received following Governor Walker's 2016 executive order.

<sup>7</sup> We did not use the Milwaukee Mayor's open records request information due to incomplete data.

<sup>8</sup> The years were calculated based on the timing of the records request - August 2015- July 2016. The second year began in August 2016 and goes through the month the government entity provided us the information (between May and July 2017).

<sup>9</sup> The last communication by the government entity is based on the data provided to us in the government entity entry log or responsive document provided to us by districts without a tracking log. The final response dates include the date the entry was closed, the date records were provided, or the date of the last communication between the requestor and the district.

<sup>10</sup> We excluded any entries that the dates were incorrectly entered, such as dates with an obvious typing error. When counting business days to respond, holidays were not taken into account.

responded, on average, within 10-15 business days received a “B.” Districts that responded, on average, within 16-20 business days received a “C.” Districts that responded in 20 business days or more received a “D.” Districts that make it practically impossible for the public to keep tabs on how they comply with the open records requests received a “F.”

Racine Unified School District received 90 requests within the two year period, but on average responded within 10.7 business days. Similarly, Green Bay Area School District received 58 requests within the two year period and responded on average within 10.2 business days. Both of these districts demonstrate open records practices that are efficient and within the Wisconsin Attorney General’s guidelines.

In contrast, Oshkosh Area School District received only 25 requests within the two year period, but responded on average in 19.7 business days. Similarly, Middleton-Cross Plains Area School District only received 13 requests in two years, but responded on average within 16.8 business days. While we cannot account for the complexity of the requests, the average response rates of Oshkosh and Middleton-Cross Plains school districts are well above the 10 business day recommendation despite receiving fewer requests within the time period than districts that responded faster.

Milwaukee Public School District is by the far worst district at responding to open records requests – requiring 30 days for 195 requests within the two year period.

<b>Milwaukee</b>			
<b>Requests</b>	<b>#</b>	<b>Average response (business days)</b>	<b># of district staff</b>
August 2015 - July 2016	<b>103</b>	<b>30.7</b>	<b>3</b>
August 2016 - June 2017	<b>92</b>	<b>29.3</b>	
<b>Total</b>	<b>195</b>	<b>30</b>	

<b>Oshkosh</b>			
<b>Requests</b>	<b>#</b>	<b>Average response (business days)</b>	<b># of district staff</b>
August 2015 - July 2016	17	16.2	<b>3</b>
June 2016 - June 2017	8	27	
<b>Total</b>	<b>25</b>	<b>19.7</b>	

<b>Racine</b>			
<b>Requests</b>	<b>#</b>	<b>Average response (business days)</b>	<b># of district staff</b>
August 2015 - July 2016	<b>56</b>	<b>11.9</b>	<b>1</b>
August 2016 - May 2017	<b>34</b>	<b>8.7</b>	
<b>Total</b>	<b>90</b>	<b>10.7</b>	

<b>Green Bay</b>			
<b>Requests</b>	<b>#</b>	<b>Average response (business days)</b>	<b># of district staff</b>
August 2015 - July 2016	29	9.7	<b>3</b>
August 2016 - July 2017	29	10.7	
<b>Total</b>	<b>58</b>	<b>10.2</b>	

**2. MPS does not follow the intent of Wisconsin’s Open Records law to respond “as soon as practicable and without delay.”**

Out of the 12 school districts log entries we analyzed, MPS received the most open records requests within the time frame. From August 1, 2015 to June 2017, MPS received 195 requests. Racine Unified School District received 90 requests in the same time period, while the other districts received well below 100 requests. MPS had, by far, the most open records requests and the longest average response rate compared to the other school districts.

Since MPS received so many more open records requests and is the largest district in the state, we also compared MPS to state agencies. Both the Wisconsin Department of Public Instruction (DPI) and Department of Veteran Affairs (DVA) receive a similar amount of open records requests to MPS. However, the DVA’s average response rate is 8.7 business days for 193 requests and DPI’s response rate is 12.5 business days for 114 requests. Despite receiving a similar amount of open records requests to DVA and DPI, MPS’ response rate is still an outlier.

This discrepancy is not due to lack of staffing. MPS has three employees whose job includes responding to open records requests. In comparison, the DVA has two staff positions and DPI has 5 staff positions responding to requests.

Department of Natural Resources			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	3703	14.9	3
August 2016 - July 2017	4263	6.4	
<b>Total</b>	<b>7966</b>	<b>10.3</b>	

Department of Public Instruction			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	58	16	5
August 2016 - May 2017	56	8.9	
<b>Total</b>	<b>114</b>	<b>12.5</b>	

In fact, the Department of Natural Resources (DNR), a state agency with a smaller budget but with the same number of staff dealing with requests as MPS, has a better response rate than MPS while receiving significantly more open records requests.<sup>11</sup> The DNR received 7,966 requests within the time frame and has an average response rate of 10.3 business days.

One major difference between MPS and DPI, DVA, and DNR – state agencies are required to comply with Governor Walker’s Executive Orders for open records requests, including a requirement that agencies responding within 10 business days, if possible.

However, even compared to the Milwaukee County Executive’s office, MPS’ response rate is significantly higher. The Milwaukee County Executive received 46 requests and has an average response rate of 10.5 business days.

<sup>11</sup> Milwaukee Public School District has an annual budget of around \$1.1 billion. See Milwaukee Public Schools Superintendent’s Proposed Budget 2017-2018, <http://mps.milwaukee.k12.wi.us/MPS-English/CFO/Budget--Finance/2017-18SuperintendentsProposedBudget.pdf>. The Department of Natural Resources has an annual budget of over \$500 million dollars. See also 2017-2019 Summary of All Funds Appropriations, [http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/2017-19%20Executive%20Budget/Statewide%20Budget%20Appropriations%20by%20Agency%20revised\\_web.pdf](http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/2017-19%20Executive%20Budget/Statewide%20Budget%20Appropriations%20by%20Agency%20revised_web.pdf)

This analysis leads us to the conclusion that MPS can – and should - do better when responding to open records requests. The size and complexity of the school district is not an excuse for failing to respond in a timely manner. State agencies and other local governmental entities are able to respond to requests much more quickly than MPS.

### **3. Madison Metropolitan School District does not have a tracking system for open records requests.**

While MPS’ open records practices are deeply disturbing, they deserve credit for at least providing the documents free of charge that enabled us to understand how quickly they comply with open records requests. In comparison, Madison Metropolitan School District (“MMSD”) did not provide us any records because they required us to pay a fee in order to receive the records we requested. While a fee to receive records was unfortunately, common,<sup>12</sup> MMSD wanted \$1,148.00 for the records.

Put another way, in order for the public to learn how MMSD complies with open records requests in the last two years, they need to pay MMSD over \$1,000.

When questioned, MMSD’s attorney justified the exorbitant fee by telling us:<sup>13</sup>

*The MMSD designates one individual as the "records custodian." Ideally, all requests would come to that individual and they would be processed through one channel. Because the public at large may not be fully informed that the District has one records custodian, requests may and do get submitted to numerous individuals. In an ideal world those requests would be forwarded to that single records custodian and that individual would respond. However, the District recipient of a request may respond immediately without necessarily informing the District's records custodian. This process may be exacerbated by the fact that no "magic words" are necessary to make a public records request. Consequently, a search for all public records requests would require an extensive search of numerous emails and files to ensure that all requests are identified. ... I do note that many of the more formal requests for public records, and by "more formal" I mean requests that specifically cite public records statutes (such as the current request submitted by WILL), are channeled from the District's record custodian to the Legal Services office.*

Although we understand that tracking open records requests can be challenging, MMSD’s explanation does not make them unique to other school districts. It was surprising that the second largest school district in the state does not train its employees to either forward any requests to the records custodian or require the tracking of any requests that employees receive.

### **4. School districts should follow the best practices of Governor Walker’s executive orders.**

State agencies, due in part to Governor Walker’s 2016 Executive Order, seem to be more open and transparent than some of the state’s largest school districts. The state agencies we studied – DVA, DNR, and DPI - receive at least as many and in most cases more requests than many of Wisconsin’s largest school districts, but these agencies have a better response rate. According to

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<sup>12</sup> In comparison, other school districts required us to pay a fee ranging from \$15 - \$300.

<sup>13</sup> WILL email exchange with MMSD attorney Matthew Bell on June 15, 2017.



an article in the Wisconsin State Journal, most state agencies improved their response time after Governor Walker's executive order.<sup>14</sup>

In the interest of good government, we recommend that Wisconsin school districts review their open records practices and follow Governor Walker's 2016 Executive Order best practices. This includes:<sup>15</sup>

“Incr[eas]ing the quality of its customer service in fulfilling public records requests by responding to requests promptly, updating requestors on the status of their requests, tracking all requests and facilitating access to electronic records whenever practicable.”

And, "allocat[e] sufficient staff resources to create a tracking system to track the agency's public record requests, to ensure that each request is given regular attention and fulfilled as soon as it is practicable to do so, regardless of the order in which each request is received.”

State law requires District Superintendents to serve as the records custodian. The records custodian has the ability to designate other staff to serve as legal custodians of particular records. If they do not already, school districts should take advantage of this opportunity to create an efficient process for responding to open records requests.

In particular, districts such as Milwaukee Public Schools, Oshkosh Area Public Schools and Middleton-Cross Plains Area Public Schools should review their open records policies and strive to give the public more access to their records free of charge.

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<sup>14</sup> Matthew DeFour, *State Agencies responding more quickly to record requests since last year*, Wisconsin State Journal, March 12, 2017, [http://host.madison.com/wsj/news/local/govt-and-politics/state-agencies-responding-more-quickly-to-records-requests-since-last/article\\_0cbcf330-098e-5329-ac21-247b274430cc.html](http://host.madison.com/wsj/news/local/govt-and-politics/state-agencies-responding-more-quickly-to-records-requests-since-last/article_0cbcf330-098e-5329-ac21-247b274430cc.html)

<sup>15</sup> Wisconsin Office of the Governor, executive order #189, March 11, 2016.

## Appendix A

Appleton			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	15	5.7	1
August 2016 - May 2017	12	9.4	
<b>Total</b>	<b>27</b>	<b>7.3</b>	

Milwaukee			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	103	30.7	3
August 2016 - June 2017	92	29.3	
<b>Total</b>	<b>195</b>	<b>30</b>	

Department of Public Instruction			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	58	16	5
August 2016 - May 2017	56	8.9	
<b>Total</b>	<b>114</b>	<b>12.5</b>	

Fond du Lac			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	10	22.1	1
August 2016 - May 2017	6	5.1	
<b>Total</b>	<b>16</b>	<b>15.75</b>	

Oshkosh			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	17	16.2	3
June 2016 - June 2017	8	27	
<b>Total</b>	<b>25</b>	<b>19.7</b>	

Department of Natural Resources			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	3703	14.9	3
August 2016 - July 2017	4263	6.4	
<b>Total</b>	<b>7966</b>	<b>10.3</b>	

Green Bay			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	29	9.7	3
August 2016 - July 2017	29	10.7	
<b>Total</b>	<b>58</b>	<b>10.2</b>	

Racine			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	56	11.9	1
August 2016 - May 2017	34	8.7	
<b>Total</b>	<b>90</b>	<b>10.7</b>	

Department of Veterans Affairs			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	99	8.7	3
August 2016 - July 2017	94	8.8	
<b>Total</b>	<b>193</b>	<b>8.7</b>	

Janesville			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	12	9.6	1
August 2016 - May 2017	3	10.3	
<b>Total</b>	<b>15</b>	<b>9.8</b>	

Stevens Point			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	12	29.2	1
August 2016 - June 2017	19	7.1	
<b>Total</b>	<b>31</b>	<b>15.6</b>	

Milwaukee County Executive			
Requests	#	Average response (business days)	# of staff
August 2015 - July 2016	21	16.6	5
August 2016 - July 2017	25	5.4	
<b>Total</b>	<b>46</b>	<b>10.5</b>	

Middleton-Cross Plains			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	6	26	2
August 2016 - May 2017	7	9	
<b>Total</b>	<b>13</b>	<b>16.8</b>	

Sun Prairie			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	14	11.8	2
August 2016 - July 2017	21	13	
<b>Total</b>	<b>35</b>	<b>12.5</b>	

Waukesha			
Requests	#	Average response (business days)	# of district staff
2015 - July 2016	19	7.2	5
August 2016 - May 2017	7	7	
<b>Total</b>	<b>26</b>	<b>7.1</b>	

West Allis - West Milwaukee			
Requests	#	Average response (business days)	# of district staff
August 2015 - July 2016	1	4	*district said no job description includes responding to open records requests
August 2016 - June 2017	2	8	
<b>Total</b>	<b>3</b>	<b>6.6</b>	