

WILL: Legislature should protect Wisconsin's public records law

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The News: The Wisconsin Institute for Law & Liberty (WILL) issued a [policy brief](#) that encourages the Wisconsin legislature to fix Wisconsin's open records law, in light of a recent Wisconsin Supreme Court decision, to ensure that government actors are held accountable when they are sued for withholding records. Without legislative action, the Wisconsin open records and open meetings laws may lack the necessary teeth to force public officials to promptly turn over records.

The Quote: WILL Deputy Counsel, Lucas Vebber, said, "Without action, Wisconsin's public records laws could be rendered toothless. The Wisconsin legislature should make it a priority to act to ensure public officials are transparent and accountable to voters and taxpayers."

What's at Stake: The Wisconsin Supreme Court recently issued a decision in an open records dispute, [Friends of Frame Park, U.A. v. City of Waukesha](#), that clarified what it means to "prevail" in an open records case. To "prevail" means, among other things, that a court can award attorney's fees. But the decision in Frame Park made clear that a party can only "prevail" under Wisconsin law when a court makes "a final decision on the merits" and "grants a judgement for one party over the other."

This interpretation of "prevail" could significantly impact enforcement of Wisconsin's public records law. Under the Frame Park analysis, the statute does not clearly allow parties to recoup attorney's fees if the governmental entity eventually releases the records between the time a suit is filed and the time the circuit court makes a decision. In practice, this may make it prohibitively expensive for Wisconsinites to enforce open records requests that government actors refuse to comply with, thus thwarting the transparency and accountability that open records laws are meant to secure.

WILL Solutions: Lucas Vebber, WILL Deputy Counsel, and Samantha Dorning, Bradley Foundation Legal Fellow at WILL, propose some simple legislative reforms

to make clear what it means for a litigant to “prevail” in situations where a records holder releases records after a suit has been filed.

- Add a test into the statute that would simply require the court to find that the litigation itself caused the records to be released in order to award fees.
- Alternatively, state law could adopt the same definition of “prevail” that exists under federal law, litigants will be able to recover fees in the event the government provides records after a suit has been filed.
- In addition, state law could allow other forms of relief in public records suits beyond simply a mandamus action. In the open meetings context, for example, the law may be enforced by seeking “legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.”

Adopting these type of changes would shift the balance of power back to the public, rather than the government entity.