

Wisconsin Transparency Project: Wisconsin Supreme Court guts open records law remedies

Posted on Wednesday, Jul 6, 2022

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

Today, the Wisconsin Supreme Court abandoned 40 years of precedent allowing record requesters to recover attorney fees when they sue and force record custodian to release records. Previously, if a custodian changed their mind and “voluntarily” turned over records after being sued, the requester could still get their attorney fees if the lawsuit was “a cause” of the release. Now, requesters can only get fees if a court issues a ruling on the merits of a case. But because “voluntarily” turning over records typically moots a case, it remains unclear under what circumstances a court will rule on whether an initial denial was illegal.

“This is not what the state legislature intended or wrote when they enacted the Open Records Law in 1982,” said Tom Kamenick, President & Founder of the Wisconsin Transparency Project. “The Law doesn’t say a plaintiff has to get a court order, it says a plaintiff has to ‘prevail.’ When you get the records you sued to obtain, you’ve prevailed – you’ve obtained the result you wanted.”

The Wisconsin Transparency Project is the state’s only law firm dedicated exclusively to enforcing the Open Records and Open Meetings Laws. It provides no- and low-cost representation to individuals, media companies, and government watchdog organizations. The vast majority of its legal representation is done on a contingency basis, relying on attorney fee awards or settlements in court cases, and today’s decision may have destroyed that business model.

The three dissenting justices (Ann Walsh Bradley, Rebecca Dallet, and Jill Karofsky) correctly

recognized that today's decision will give custodians perverse incentives to delay and withhold records. They know they can now refuse to turn records over for no reason at all, and if they are sued, they can just turn around and release the records with no consequences. Requesters will have to spend thousands of dollars hiring an attorney to file that suit, with little chance of recovering that money, putting justice beyond affordability for many.

"Today is a dark day for transparency in Wisconsin," lamented Kamenick. "We call on the legislature and the Governor to immediately pass legislation clarifying that, like in federal FOIA lawsuits, requesters prevail when they obtain the records they sought after filing a lawsuit."