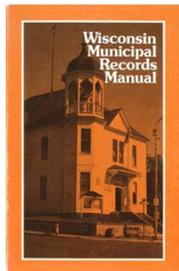




Wisconsin Municipal Records Schedule
Municipal Attorneys Institute
June 13, 2019

Andrew Baraniak
Local Government Records Archivist

"The Orange Book"



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Why Create a Municipal Schedule

- Old manual was in need of a review and updated
- Create something similar to other approved General Records Schedules
- Provide clear and uniform schedules for common records
- Promote proper records management practices
- Give clear guidance on the notification process

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Wisconsin Municipal Records Schedule

- Created over a two year period
- Primarily composed by WHS staff, under the guidance and advice provided by various local government associations
 - One being the League of Wisconsin Municipalities
- Approved for use by the PRB at August 2018 quarterly meeting

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Using the Schedule

The Municipal Schedule is arranged into the following sections:

- [Introduction](#)
- [Administrative](#)
- [Cemetery](#)
- [Community Development/Public Services](#)
- [Election](#)
- [Finance](#)
- [Public Works](#)
- [Revenue](#)

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Example

Record Series Title	Series Description	Retention	Confidential	WHS Notification
Common Council/Village Board/Town Board				
Affidavits of Publication	Records providing proof of publication for legal notices as required by law. (Note: See Wis. Stat. § 865.12 for more information on proof of publication).	Event+7 years; Event-Date of publication	No	Waive
Audio Tapes	Recordings of meetings used to produce minutes. Authority provided by Wis. Stat. § 19.21(7).	Event+90 days; Event-Date the minutes have been approved and published	No	Waive
Minutes (Common Council)	Official minutes of the Common Council/Village Board/Town Board.	Permanent	No	N/A
Ordinances	Official ordinances and any ordinance books kept by municipalities.	Permanent	No	N/A

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Accessing the schedule

Schedule can be downloaded from two locations

- WHS State Archives and Government Publications website:
<https://www.wisconsinhistory.org/Records/Article/CS15415>
- Public Records Board website
http://publicrecordsboard.wi.gov/docs_all.asp?locid=165

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Adopting the WRMS

- Municipalities **MUST** adopt the schedule first in order to use it.
- Fill out and submit the Notification of General Schedules Adoption form (PRB-002)
- Municipalities should enact an ordinance adopting the WMRS as their official schedule once confirmation of PRB approval is received

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Information on WHS Notification

ALL municipal public records must be offered for transfer to the Wisconsin Historical Society 60 days prior to their destruction. WHS can waive the notification period if a record series is determined never to be transferred. The WMRS includes a column that instructs local governments on which record series have been waived.

- **Waived:** The Wisconsin Historical Society has waived the notification period. Records can be destroyed once they are out of retention.
- **Notify:** Written notification must be given before destroying any out of retention records identified this way.
- **N/A:** indicates that the retention is permanent

Municipalities can only use the waive/notify column if they adopt the WMRS

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Important information

- The WMRS is OPTIONAL
 - Municipalities are not required to adopt it
 - By adopting the schedule, municipalities agree to the retention periods for all records series
- Municipalities may still create their own records schedules
- Municipalities may adopt additional General Records Schedules

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Moving Forward

- WMRS will sunset in 2028
- Provide feedback
- Identify other schedules that may need to be created
- Is there a need to separate towns into their own schedule?

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ISSUES SURROUNDING POLICE RECORD RETENTION SCHEDULES

Municipal
Attorney's
Institute
June 13, 2019
Milwaukee
Assistant City
Attorney Peter
Block

WIS. STAT. § 19.21

- 19.21(4)(b)

"The period of time any town, city or village public record is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in the ordinance may not be less than **2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board...**"
- 19.21(7)

"[A]ny taped recording of a meeting...by any governmental body...of a city, village, town or school district may be destroyed no sooner than **90 days** after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting."
- 19.21(4)(a)

"...Prior to...destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest..."

CONTENT V. CREATOR

- The current preference of the Public Records Board is for submitted schedules to address the **content** of the record, not who created the record, the record type, or where the record is stored.
- Schedules based on who creates the records can quickly get out of hand for larger municipalities.
- Benefits of content-based schedules:
 - Cuts down on duplicative schedules.
 - Easier to manage.
 - Easier for personnel to find and follow.
 - New schedules are not required each time a new record type is utilized.

BODY CAMERAS

- Milwaukee has 13 different record retention categories for Body Camera Footage.
- Retention period for video that shows no discernable incident or activity or incident where no police action is taken is 130 days.
- Footage is maintained longer if it will be used in court, or pertains to a felony or misdemeanor arrest, ED, active investigation, use of force, critical incident, or officer injury.



SENATE BILL 50

- SB 50 is a Bill prepared by the Joint Legislative Council's Study Committee on the Use of Police Body Cameras.
- Bill mandates that all data from a law enforcement body camera be retained for a minimum of **120 days**, except:
 - Data that records an encounter that resulted in a death, an actual or alleged physical injury, a custodial arrest, a search during an authorized temporary questioning, or the use of force shall be retained until final disposition of investigation, case, or complaint.
 - Certain entities or individuals can direct longer retention, if direction occurs within 120 days.
 - Data being used in a legal proceeding may not be destroyed until conclusion of the proceeding, or order of court or hearing examiner.
 - Data cannot be destroyed if there is a pending public record request.

ACCIDENT REPORTS

- Many municipalities have adopted schedules permitting the destruction of accident reports as soon as the reports are transferred to the DOT.
- Shortened retention periods were adopted during period of uncertainty that arose prior to *New Richmond News v. City of New Richmond*, 2016 WI App 43, 370 Wis. 2d 75.



RECORDS V. EVIDENCE HYPOTHETICAL

- Police investigate an armed robbery at a local service station. Investigators find a knife used by the suspect, a single glove used by the suspect, and the suspect's wallet. The wallet contains the suspect's driver's license, a photo of the suspect and a receipt from the service station. Investigators also take photographs of the scene, obtain a copy of the service station's security footage on a DVD, and are able to lift fingerprints from the knife. All of these items are placed in evidence.
 - Which of these items are records and which are evidence?
 - Does it matter where the items are stored?
 - Does it matter who owns or created the items?

TEXT MESSAGES

- The Wisconsin Attorney General's Office has opined that text messages relating to government business are "records."
 - Krischan Correspondence (10/3/00), Bensen Correspondence (3/12/04).
- General Schedule for Transitory Records
 - Defined as "Correspondence and other related records of short-term interest which have no documentary or evidentiary value."
 - "Transitory messages do not set policy, establish guidelines or procedures, document a transaction or become a receipt."
 - Can be destroyed when no longer needed.
- Archiving text messages can be difficult.
 - Quote Milwaukee received from Verizon for city-owned phones was \$120 a year/per phone +\$2,000 a year access fee +one-time \$1,000 set-up fee.
 - Verizon One Talk App is \$327.36 a year/per phone

TEXT MESSAGE (CONT'D)

- Police officers may use their cell phones to text fellow officers or their superiors. If these texts relate to their employment, and are not transitory, they need to be retained for the appropriate retention period and are potentially subject to disclosure under Wisconsin's Public Records Law.
- The fact that an officer is using their personal cell phone does not impact whether a text message is a record or not.
- "Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a class H felony."
 - Wis. Stat. § 946.72

SOCIAL MEDIA

- The Wisconsin Attorney General's Office has also opined that social media content relating to governmental business is a "record."
 - OAG I-06-09
- Municipalities should **not** rely on the fact that most social media companies allow users to search their histories as a reliable form of record retention.
 - Social media sites are not ultimately responsible for retaining records. Municipalities are.
- Archiving social media postings is significantly cheaper than archiving text messages.
 - Most social media archiving products retain original versions of posts, as well as any posts that have been deleted or modified.

Contact Info

Contact your friendly local government records archivist at:
andrew.baraniak@wisconsinhistory.org
(608) 264-6469

Visit the WHS Local Government Records Website:
<https://www.wisconsinhistory.org/Records/Article/CS15471>

Contact Assistant City Attorney Peter Block at:
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(414) 286-6197

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