YOUR RIGHT TO KNOW / LARRY GALLUP

Obey law on public employee records

The behavior of public employees on the job is subject to public scrutiny in nearly every circumstance under Wisconsin law.

That means the public has a right to see disciplinary records of all employees. The right doesn’t just apply to the records of elected or appointed officials. It doesn’t just apply to managers or supervisors. It applies to all public employees.

It’s a pretty simple concept.

Yet year after year in case after case, records custodians in Wisconsin have refused to release disciplinary records. Or they’ve released records with the public employees’ names redacted.

And in case after case, courts have ruled in favor of openness.

Whether the result of ignorance or obstinance, fecklessness or fear, the refusals continue.

Two recent cases illustrate the problem.

In November, a Dane County judge [ordered](http://www.hngnews.com/sun_prairie_star/news/article_148e84dd-cd2f-5689-bdc6-2f68dfb9c896.html) the state Department of Justice to release unredacted disciplinary records of 19 employees after the DOJ had stonewalled *The Lakeland Times* in Minocqua.

*The Times* had requested records of any DOJ employees disciplined between 2013 and 2016. The DOJ said it redacted the names of the 19 employees because they weren’t highly placed personnel, their infractions were minor, publicizing their names would be counterproductive and supervisors would be less likely to impose discipline if employees’ names were public. It contended that protecting the employees’ privacy rights and reputations outweighed the public interest in having this information.

Those arguments were [soundly rejected](https://assets.documentcloud.org/documents/5687907/Bailey-Rihn-Decision.pdf) by Dane County Circuit Court Judge Valerie Bailey-Rihn, who wrote: “Many of Defendants’ listed reasons for redacting information have already been addressed by higher courts. The purpose of the open records law is to allow for transparent and accountable government and public employees.”

The Times won its suit, but it shouldn’t have had to sue.

In early November, the state Department of Natural Resources [denied](http://www.startribune.com/dnr-won-t-release-records-says-humans-make-mistakes/500287551/) a request from *The Associated Press* for records regarding the conduct of a DNR employee. The DNR contended that identifying the employee would damage morale and hurt its ability to hire staff and conduct future investigations. It said disclosure was not warranted because “human beings in all walks of life make mistakes.”

A month later, the department [relented](https://www.usnews.com/news/best-states/wisconsin/articles/2018-12-12/disciplined-dnr-employee-had-won-leadership-award) and released the record, which showed that the employee had been disciplined for harassing female co-workers.

The public has every right to information about how public employees behave and what their bosses do about it. Yet challenges persist – as do rebukes from the courts.

A 2006 state court of appeals [decision](https://caselaw.findlaw.com/wi-court-of-appeals/1103868.html) noted, “Previous case law on this topic firmly reflects the public’s interest in disciplinary actions taken against public officials and employees.” It referred back to a 1995 decision that “rested on the recognition of this state's strong public policy in favor of public access to information regarding the affairs of government and the conduct of public officials and employees.”

And it cited a 1996 decision: “The supreme court concluded that there is no blanket exception under the open records law for public employee or personnel records.”

Yet, the efforts at obstructions continue.

The courts are clear. The law is clear. The refusals must stop. The public has a right to know.

*Your Right to Know is a monthly column distributed by the* [*Wisconsin Freedom of Information Council*](http://www.wisfoic.org/) *(wisfoic.org), a group dedicated to open government. Council member Larry Gallup is the consumer experience director for USA TODAY NETWORK-Wisconsin.*