

Questions on LdF Public Records & Open Meetings Practices

INTRODUCTION

In July 2022, a law firm ([The Wisconsin Transparency Project](#)) representing *Citizens for Education in Town Governance*, submitted a [letter](#) to the town clerk and fire chief detailing concerns on compliance with open meetings and public records laws, particularly with administration of the fire/ambulance department. At a town board meeting on August 17, 2022 ([Agenda](#), [Audio](#), [Minutes](#)), the town chair stated he forwarded the letter and attachments to the town's attorney. See [Lakeland Times, August 23, 2022](#).

Receiving no response from town officials by October, CETG's attorney submitted another [letter](#) ([October 10, 2022](#)) to the town clerk and fire chief. Town supervisor, Robert Hanson, then asked that a town meeting agenda include a status report on the issue. Chairman Gaulke reported to the town board on December 7, 2022 ([Agenda](#), [Audio](#), [Minutes](#)). The minutes of that meeting and an article in the [Lakeland Times \(December 13, 2022\)](#) summarize the chairman's report. The article also includes comments made by the chairman after the meeting had ended.

Following the chair's report, *Citizens for Education in Town Governance* (CETG) sent a [letter](#) ([December 18, 2022](#)) to the Wisconsin Department of Safety and Professional Services (DSPS) requesting an immediate audit of the town's administration of the 2% Fire Dues Program. The DSPS responded promptly ([December 19, 2022](#)) that an audit will be conducted in 2023, as early as possible after January.

This is not the only time that CETG has been represented by The Wisconsin Transparency Project. In 2019, the law firm submitted a [letter](#) to the town clerk questioning the "...Town's response to several open records requests and more generally the Town's failure to fully comply with its responsibilities under the Open Records Law." Following receipt of a response from the town's attorney ([letter dated December 4, 2019](#)), CETG asked the Town Board in two letters to update the town's public records ordinance ([letter](#), [letter](#)). As of 2023, the ordinance remains unchanged.

BACKGROUND

December 28, 1982. The Town Board approved its [original Public Access to Records Ordinance](#) on December 28, 1982.

March 22, 2017. On March 22, 2017, Citizens for Education in Town Governance (CETG) submitted a [letter](#) to the Town Board suggesting the board: 1) review the entire ordinance and related administration practices with respect to the appropriate statutes, 2) review publicly suggestions for revising the ordinance and administrative practices, and, 3) adopt a revised ordinance and administration practices at a regularly scheduled meeting of the town board.

CETG submitted the letter to the Town Board in part because requesters of documents were being charged a fee based on the number of minutes it took the town clerk to process a document request at \$21.50 per hour, a practice CETG believed to be inconsistent with Wisconsin Statutes, sec. 19.35(3)(c).

March 29, 2017. The Town Board acknowledged the letter at its regular meeting on March 29, 2017, and the town chair stated the town's attorney will review the ordinance and the item will be on a future agenda. ([Agenda](#), [Audio Recording](#), [Minutes](#)) The [minutes](#) for the March 29, 2017 board meeting include the following statement. Italics added.

A letter was received from the Citizens for Education in Town Governance requesting the board review our open records request charge policy to be in compliant with state statutes. Mr. Gaulke stated this letter was forwarded to our attorney who is reviewing the request and this item will be placed on a future agenda.

May 6, 2017. Citizens for Education in Town Governance submitted a [letter to the town board](#) listing several questions related to revising the town's Public Access to Records Ordinance 12-28-82. The letter was referenced at the town board meeting held on May 10, 2017 ([Agenda](#), [Audio Recording](#), [Minutes](#)).

May 10, 2017. At the regular town board meeting held on May 10, 2017, the town board approved a motion authorizing the town's attorney to draft an updated public records ordinance that comports with State of Wisconsin statutes. The town board also authorized issuing refunds to folks who were charged previously for document searches ([Agenda](#), [Audio Recording](#), [Minutes](#)). The minutes include the following statement. Italics added.

The town had received a letter from the Citizens for Education group questioning our fees for open records requests. After looking at the statues and by referring to an old policy posted in the deputy clerk's office it indeed seems we had been charging incorrectly. We would like to return the incorrectly collected fees and have our attorney create an open records policy/ordinance that conforms to state statues and general operating procedures. We will send along a copy of the letter received from the Citizens for Education group as it refers to some recommendations to be included. We will let our attorney handle that. Motion by Mr. Mayer to approve forwarding to legal counsel a request to review and create a new ordinance/policy and refund the incorrectly collected fees back to the requestors. Motion seconded by Mr. Hanson. Motion carried.

September 22, 2017. Citizens for Education in Town Governance submitted [a letter to the town board](#) questioning when the town board would provide an update on progress toward revising the ordinance.

October 18, 2017. The town board reviewed a [draft of the proposed public records ordinance](#) its meeting on October 18, 2017 ([Agenda](#), [Audio Recording](#), [Minutes](#)). The minutes for the meeting include the following statement, italics added,

Attorney Harrold prepared a draft of an open records ordinance. It was brought before the board today for review. There were several comments/suggestions by those present today for items that should be clarified or added. The clerk will bring those items to the attorney's attention and await an update from him. No action taken.

February 22, 2018. At the regular town board meeting held on February 22, 2018, board members briefly discussed a [proposed ordinance](#) during its "First Reading". The Town Chair acknowledged the document is now available to the public, and citizens will be permitted to comment on the ordinance during its "Second Reading" at a future board meeting ([Agenda](#), [Audio Recording](#), [Minutes](#)). The minutes include the following statement. Italics added.

Mr. Gaulke explained to the board received a draft of the Notice of records access prepared by Attorney Harrold. The board has had time to review the record and a motion by Mr. Mayer seconded by Mr. Hanson to waive the first reading. Motion carried. The second reading and adoption will take place at the next Town Board Meeting.

March 7, 2018. The [public records ordinance as proposed](#) by the Town Board was reviewed and discussed at its "Second Reading" on March 7, 2018 ([Agenda](#), [Audio Recording](#), [Minutes](#)). A representative of Citizens for Education in Town Governance read a [brief statement](#) asking the Board to postpone approving the ordinance until board members took time to thoughtfully consider comments that were then submitted to the board in a prepared [written statement](#). After the board discussed the proposed ordinance and interacted with citizens in attendance, it approved a motion referring the suggested revisions to the town's attorney for additional review.

The minutes of the March 7 meeting include the following statement, italics added.

Norm Wetzel who is here today representing Citizens for Education in Town Governance has brought to the boards attention along with a document asking the town not to adopt the ordinance in its current condition. He explained there are items that need to be addressed for clarification before the adoption takes place. Items of question were brought to the board's attention. Motion by Mr. Hanson seconded by Mr. Mayer to have the questions and minor typing errors brought to Attorney Harrold for review. Motion carried.

August 1, 2018. At its regular meeting on August 1, 2018, the Town Board waived the "First Reading" of [Open Records Ordinance 2018-01](#) ([Agenda](#), [Audio Recording](#), [Minutes](#)). This was the second time the Town Board addressed a "First Reading" of revisions to the original ordinance, having reviewed another draft of the ordinance in a "First Reading" on February 22, 2018.

The minutes of the August 1, 2018 meeting include the following statement, italics added.

Mr. Gaulke stated this was put on the agenda again after the attorney did some minor corrections to the original draft. Mr. Sommerfeldt had a concern about the fee per page charge today. He had contacted our vendor for our copy machine and came up with a lengthy formula of cost per page. It was explained to him that the fee of .25 per page was what is allowed per State Statute so it will remain. Motion by roll call: Mr. Mayer

Aye, Mr. Gaulke Aye, to waive the first reading of the ordinance. Motion carried. The second reading and adoption will take place on August 22, 2018 at our next Town Board Meeting.

August 22, 2018. At a regular meeting seventeen months later, August 22, 2018, the Town Board adopted *Open Records Ordinance 2018-01*, revising substantially the Public Access to Records Ordinance of 1982. President Gaulke and Supervisor Mayer voted to adopt the ordinance, while Supervisor Hanson did not, explaining in part that Section 2(a) of the ordinance as proposed remains "in violation of State law". ([Agenda](#), [Audio](#), [Minutes](#)). The minutes of the meeting held on August 22, 2018, include the following statements, italics added.

This ordinance was on the agenda for the second reading and adoption. Today Mr. Wetzel again brought up several items in the ordinance that he feels still needs attention.

Section (1b) regarding the legal custodian. He feels there should be some wording for an alternate to the town clerk. We will again have Attorney Harrold look into this.

Section 2(a) not responding to oral requests. Supervisor Hanson believes how it is written is not correct according to the statutes and Attorney Harrold may be incorrect in his wording. Upon reading the statute Mr. Gaulke and Mr. Mayer felt it was worded correctly. We will ask Attorney Harrold for his written opinion regarding this.

Section 3(4) cost of photocopies. The board feels this fee is appropriate according to what is in the statutes and the recent publication from the Wisconsin Towns Association.

*Motion by Mr. Mayer seconded by Mr. Gaulke to adopt Open Records Ordinance 2018-01 with the correction to be made regarding the alternate custodian to the clerk.
Roll Call Vote: Mr. Mayer: Aye, Mr. Hanson: Nay, Mr. Gaulke Aye. The ordinance is adopted with the understanding that Section 1(b) will be updated.*

During discussion prior to the vote, a representative of Citizens for Education in Town Governance questioned the propriety of the fee schedule in the proposed ordinance (Section 3), and gave the board members a copy of a "[fee advisory](#)" issued (August 8, 2018) by the [Wisconsin Department of Justice, Office of Open Government](#).

September 19, 2018. At a regular meeting on September 19, 2018, the Town Board waived the first reading of a "[Revised Open Records Ordinance](#)", with the accommodating suggestions that were proffered previously by Supervisor Hanson. The revised ordinance acknowledges that document requests may be submitted orally and that the Deputy Clerk is the legal custodian in the absence of the Town Clerk ([Agenda](#), [Audio](#), [Minutes](#)).

Minutes of the meeting include the following statement, italics added:

Mr. Gaulke stated that at he last meeting after the second reading of the Open records ordinance 2018-01 which was passed but not published, there were some concerns regarding the wording to have an alternate custodian, and the wording to accept oral requests. We consulted with the town attorney again ad he added some additional wording to ordinance 2018-01. Today we again have a first reading of this revised ordinance. The wording that the deputy clerk will be the alternate custodian to the clerk if she is not available. The wording that oral requests will be accepted, however for efficiency and clarity it is suggested that requests be in writing. After explaining the

revisions to the board a motion was made by Mr. Mayer, seconded by Mr. Hanson to approve the revised ordinance. Roll Call Vote taken, Mr. Mayer, Aye, Mr. Hanson, Aye, Mr. Gaulke Aye. Motion carried. This item will be placed on the next agenda for the second reading and adoption.

October 3, 2018. At a regular meeting on October 3, 2018, the Town Board adopted Ordinance 2018-01, Notice of Records Access, Revised ([Agenda](#), [Minutes](#)). The draft minutes includes the following statement, italics added:

This is the second reading and adoption of the revised Open Records Ordinance 2018-01. Motion by Mr. Mayer to waive the second reading and to adopt the Revised Open Records ordinance 2018-01 as presented. Roll Call Vote: Mr. Mayer: AYE, Mr. Hanson: AYE, Mr. Gaulke: AYE. Motion carried.

June 5, 2019. On June 5, 2019, Wisconsin's District II Court of Appeals released a [decision](#) that may have implications for [Lac du Flambeau's Open Records Ordinance](#). The decision affirms the right of those who request records to receive them in electronic form, an affirmation of an [earlier court ruling](#) that reached the same conclusion.

November 25, 2019. On November 25, 2019, a law firm ([The Wisconsin Transparency Project](#)) representing *Citizens for Education in Town Governance* submitted a [letter](#) to the town clerk "with regard to the Town's response to several open records requests and more generally the Town's failure to fully comply with its responsibilities under the Open Records Law."

December 4, 2019. The town's attorney, Gregory Harrold, responded in a [letter dated December 4, 2019](#) and the town clerk provided the records that were requested on December 11, 2019.

December 16, 2019. In light of the letters the town officials received from CETG's attorney and its own attorney, Citizens for Education in Town Governance submitted a [letter](#) to the Town Board dated December 16, 2019 asking the Town Board to update Ordinance 2018-01 Notice of Records Access (Revised) accordingly.

December 18, 2019. The Town Clerk responded in an [email dated December 18](#) stating that if CETG's attorney "has suggested revisions in in the ordinance he should draft them and send them to the Town Attorney Greg Harrold."

December 23, 2019. CETG then submitted another [letter](#) to the Town Board dated December 23, 2019 stating that "the Town Board and the Town's attorney are responsible for maintaining up-to-date and accurate ordinances." Moreover, the letter reiterated CETG's request for the Board to acknowledge CETG's letter of December 16 and to respond to it at a public board meeting.

ADDITIONAL INFORMATION

Access to the [Public Records Law, and other pertinent sources of information](#) are available through the [CETG website](#).