

ORDINANCE NO. 2014-4

**AN ORDINANCE REGARDING STATUTORY LIMITS ON
ACCESS TO MUNICIPAL AND MUNICIPAL UTILITY RECORDS**

The Village Board of the Village of Bristol, Kenosha County, Wisconsin, do ordain as follows:

SECTION I. REPEAL AND RECREATION OF PROVISIONS.

Section 3-3-6 of the Village of Bristol Code of Ordinances is repealed and recreated to read as follows:

Sec. 3-3-6 Limitations on Right to Access.

- (a) **Specific Records Exempt From Inspection.** As provided in Sec. 19.36, Wis. Stats., the following records are exempt from inspection and/or copying under this Chapter:
- (1) **Records Specifically Exempted by State or Federal Law.** Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law.
 - (2) **Investigative Records.** Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state.
 - (3) **Computer Programs and Data.** Computer programs, as defined in Sec. 16.971(4)(c), Wis. Stats., is not subject to examination or copying, but the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection. [Note: The limits to access to computer programs and electronic files are clarified in *WIREDATA, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis.2d 397, 751 N.W.2d 736, 05-1473].
 - (4) **Trade Secrets.** Pursuant to Sec. 905.08, Wis. Stats., a record or any portion of a record containing information qualifying as a common law trade secret. Per Sec. 134.90(1)(c), Wis. Stats., "trade secrets" are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes which are used for making, preparing, compounding, treating or processing articles, materials or information which are obtained from a person and which are generally recognized as confidential.
 - (5) **Identities of Applicants for Public Positions.** The identity of an applicant for a public position other than a local public office may be

withheld upon the request of such applicant unless such applicant is a final candidate for that position as defined in Sec. 19.36(7), Wis. Stats.

- (6) ***Identities of Law Enforcement Informants.*** If a law enforcement agency receives a request to inspect or copy a record that contains information including, but not limited to, a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record. Sec. 19.36(8), Wis. Stats., provides, however, that the legal custodian of the record may release such information after making a determination that the public interest in allowing a person to inspect or copy such identifying information outweighs the harm done to the public interest by providing such access. "Informant" and "law enforcement agency" are defined in Sec. 19.36(8), Wis. Stats.

- (7) ***Employee Personnel Records.*** Unless access is specifically or authorized by statute, access is not permitted to personnel records containing the following information, except to the employee or the employee's representative to the extent required under Sec. 103.13, Wis. Stats., or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under Ch. 111 or pursuant to a collective bargaining agreement under Ch. 111, Wis. Stats.:

- a. Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.
- b. Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by a municipal employee prior to disposition of the investigation.
- c. Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.
- d. Information relating to one (1) or more specific employees that is used by the employer for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

- (8) ***Records Containing Personal Information of an Individual Holding a Local or State Public Office.*** Unless access is specifically authorized or required by state statute, an authority shall not provide access to records, except to an individual to the extent required under

Sec. 103.13, Wis. Stats., containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local or state public office, unless the individual authorizes the authority to provide access to such information. This limitation does not apply to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

(9) ***Personally Identifiable Information Relating to Certain Employees.***

Unless access is specifically authorized or required by statute, an authority shall not provide access to a public record prepared or provided by an employer performing work on a project to which Sections 66.0903, 66.0904, 103.49, or 103.50, Wis. Stats., applies, or on which the employer is otherwise required to pay prevailing wages, if that record contains the name or otherwise personally identifiable information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information. "Personally identifiable information" does not include an employee's work classification, hours of work, or wages or benefit payments received for work on such a project.

(10) ***Financially Identifying Information.*** An authority shall not provide access to personally identifiable data that contains an individual's account or customer number with a financial institution including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law.

(b) ***Public Library Circulation Records.*** As provided by Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this Chapter.

(c) ***Assessor's Income and Expense Records.*** Whenever the Assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to Sec. 70.47(7)(af), Wis. Stats., or any successor statute, then such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis, except, however, that the information may be revealed to and used by persons: in the discharge of duties imposed by law; in the discharge of duties imposed by office (including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and by the Board of Review in performance of its official duties); or pursuant to the order of a court. Income and expense information provided to the Assessor under Sec. 70.47(7)(af), Wis. Stats., unless a court determines that it is inaccurate, is, per Sec. 70.47(7)(af), Wis. Stats., not subject to the right of insertion and copying under Sec. 19.35(1), Wis. Stats.

(d) ***Municipal Utility Customer Information.***

(1) ***Restrictions on Access to Customer Information; Exceptions.***

Pursuant to Sec. 196.137(2), Wis. Stats., a municipal utility shall not release customer information to any person except with the prior

consent of the customer. Customer information is not subject to inspection or copying under Sec. 19.35, Wis. Stats. The following are exceptions to this prohibition where municipal utility customer information may be released to the following parties without prior consent from the utility customer:

- a. Agents, vendors, partners, and affiliates of the municipal utility that are engaged to perform any services or functions for or on behalf of the utility. This may include other municipal departments;
- b. Transmission and distribution utilities and operators within whose geographic service territory the customer is located;
- c. The Wisconsin Public Service Commission (PSC) or any person whom the PSC authorizes by order or rule to receive customer information;
- d. An owner of a rental dwelling unit to whom the municipal utility provides notice of past due charges per Sec. 66.0809(5), Wis. Stats.;
- e. A municipal security purchaser or investor in order to comply with security disclosure obligations;
- f. A title agent, insurer, lender, mortgage broker or attorney in connection with the preparation of real estate closing documents;
- g. A lender or prospective purchaser in connection with the foreclosure of a property;
- h. An owner of real property provided with municipal utility service or the owner's designated agent; or
- i. Any person who is otherwise authorized by law to receive customer information.

(2) **Definitions.** The following definitions shall be applicable in this Subsection:

- a. "Customer information" means any information received from municipal utility customers which serves to identify customers individually by usage or account status.
- b. "Municipal utility" has the meaning given in Sec. 196.377(2)(a)3, Wis. Stats.

(e) **Miscellaneous Grounds for Records Access Denial.** In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the municipal attorney, may deny the request, in whole or part, only if the legal custodian determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. In addition to specific nondisclosure records specified in this Section, general examples of matters involving certain official closed meeting minutes or sensitive internal municipal investigative matters for which disclosure may be refused include, but are not limited to, the following:

- (1) **Quasi-Judicial Hearing Deliberations.** Pursuant to Sec. 19.85(1)(a), Wis. Stats., records of deliberations concerning a case which was the subject of any judicial or quasi-judicial hearing or trial before that governmental body.
 - (2) **Employment Deliberations Records.** Pursuant to Sec. 19.85(1)(b), Wis. Stats., records of current deliberations concerning employment, dismissal, promotion, demotion, compensation determination, performance or discipline of any municipal officer or employee, or the investigation of charges against a municipal officer or employee, unless such officer or employee consents to such disclosure.
 - (3) **Crime Prevention Strategies.** Pursuant to Sec. 19.85(1)(d), Wis. Stats., records concerning current strategy for crime detection or prevention.
 - (4) **Records Pertaining to Competitive or Bargaining Matters.** Pursuant to Sec. 19.85(1)(e), Wis. Stats., records of current deliberations or negotiations on the purchase of property for the municipality, investing of municipal funds, or other municipal business whenever competitive or bargaining reasons require nondisclosure.
 - (5) **Sensitive Personal Information.** Pursuant to Sec. 19.85(1)(f), Wis. Stats., medical, financial, social or personal histories or disciplinary data for specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.
 - (6) **Privileged Communications With Legal Counsel.** Pursuant to Sec. 19.85(1)(g), Wis. Stats., records of current deliberations which involve communications between legal counsel for the municipality and any official, officer, agent or employee of the municipality when legal advice being rendered concerning strategy with respect to current litigation in which the municipality or any of its officials, officers, agents or employees is or is likely to become involved, or communications with are privileged under Sec. 905.03, Wis. Stats.
 - (7) **Ethics Opinions.** Pursuant to Sec. 19.85(1)(h), Wis. Stats., requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.
 - (8) **Certain Acts by Businesses.** Pursuant to Sec. 19.85(1)(i), Wis. Stats., records of deliberations considering any or all matters related to acts by businesses under Sec. 560.15, Wis. Stats., which, if disclosed to the public, could adversely affect the business, its employees or former employees.
- (f) **Redacting.** If a municipal record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The legal custodian of the record shall confer with the municipal attorney prior to releasing any such record and shall follow the guidance of the municipal attorney when separating out the exempt material. If, in the

judgment of the legal custodian and the municipal attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. CONFLICTING PROVISIONS REPEALED.

All Ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION IV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 10th day of February, 2014.

VILLAGE OF BRISTOL, WISCONSIN



Village President

Amy E. Klenius
Village Clerk-Treasurer

INTRODUCED: 2/10/14

ADOPTED: 2/10/14

PUBLISHED: 2/25/14

State of Wisconsin:
County of Kenosha:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly enacted by the Village Board of the Village of Bristol on the 10th day of February, 2014 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 10th day of February, 2014

Amy E. Klenius
Village Clerk-Treasurer