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ACLU-WI Opposes SB-789

Under current law, a government official or agency may charge a fee to a requester of public records for the actual, necessary, and direct cost incurred to locate, if the cost exceeds \$50, copy, and mail public records in response to the request. Under the ruling in the 2012 Wisconsin Supreme Court case *Milwaukee Journal Sentinel v. City of Milwaukee*, state public records law does not allow an authority to impose fees on a requester for the costs of redacting information from a record.¹ As the opinion in the case highlighted, fees related to obtaining public records impacts access:

This case is not about a direct denial of public access to records, but the issue in the present case directly implicates the accessibility of government records. The greater the fee imposed on a requester of a public record, the less likely the requester will be willing and able to successfully make a record request. Thus, the imposition of fees limits and may even serve to deny access to government records. In interpreting the Public Records Law, we must be cognizant that the legislature's preference is for “complete public access” and that the imposition of costs, as a practical matter, inhibits access.²

The opinion also included text of the Wisconsin Public Records Law “Declaration of Policy”³ in its entirety.

SB-789 would authorize law enforcement and corrections agencies to charge a requester a fee for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded video content disclosed in response to a public records request to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law. While enactment of this proposal would change the law interpreted in the case above, it would not change the reality that additional imposition of fees limits and may even serve to deny access to government records in the possession of law enforcement and corrections agencies.

Records—including reports and body camera footage—containing evidence of officer misconduct, disciplinary records, or officer use of force or other critical incidents are implicated by SB-789. While the proliferation of police worn body cameras was intended to increase transparency and accountability, especially in circumstances when an individual is killed by law enforcement, a recent investigation by Pro Publica found that release of footage had not occurred over a year after the incident in the vast majority of cases.⁴ In some circumstances, the video was available but at a cost prohibitive fee.

¹ *Milwaukee Journal Sentinel v. City of Milwaukee*, 341 Wis.2d 607 (2012).

² *Id.* at 613.

³ Wis. Stat. § 19.31.

⁴ Umar Farooq, “Body Cameras Were Sold as a Tool of Police Reform. Ten Years Later, Most of the Footage is Kept From Public View,” Pro Publica (December 18, 2023), <https://www.propublica.org/article/body-camera-videos-police-killings-remain-hidden-from-public>.

In Wisconsin, one detective explicitly acknowledged that excessive fees are used as a tactic to deter public requests for police records. In an email he stated, “He said that trying to fight the release of the personnel file would be a waste of time/money and it’s rarely successful. He said many departments combat the issue by charging a high price to fill those requests, so maybe that’s something to look at in the future.”⁵

Lack of transparency and police accountability creates further distrust in law enforcement, making community engagement with law enforcement more fraught and less effective. Ultimately, proposals like SB-789 could allow law enforcement to shirk their obligation to be publicly accountable and further erode the belief that police protect communities rather than only their own.

⁵ Isiah Holmes, “Internal email suggests Tosa PD use high fees to ‘combat’ record requests,” Wisconsin Examiner (November 23, 2020), <https://wisconsinexaminer.com/2020/11/23/internal-email-suggest-tosa-pd-use-high-fees-to-combat-records-requests/>.