



2023 ASSEMBLY BILL 145

April 7, 2023 - Introduced by Representatives NOVAK, SWEARINGEN, ALLEN, ARMSTRONG, BALDEH, BEHNKE, BODDEN, BROOKS, EDMING, GUNDRUM, GUSTAFSON, KITCHENS, KNODL, MACCO, MURPHY, MURSAU, NEDWESKI, PENTERMAN, RETTINGER, RODRIGUEZ, SORTWELL, TITTL, TRANEL, TUSLER, WITTKKE, STEFFEN and C. ANDERSON, cosponsored by Senators STROEBEL, BALLWEG, CABRAL-GUEVARA, COWLES, FELZKOWSKI, NASS, QUINN, ROYS, WANGGAARD and SPREITZER. Referred to Committee on Government Accountability and Oversight.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber* 19.37 (2) (a); and *to create* 19.37 (2) (a) 2. of the statutes;
2 **relating to:** obtaining attorney fees and costs under the state’s public records
3 law when an authority voluntarily or unilaterally releases a contested record
4 after an action has been filed in court.

Analysis by the Legislative Reference Bureau

Currently, if a person requests access to a public record and the agency or officer in state or local government having custody of the record, known as an “authority” under the public records law, withholds or delays granting access to the record or a part of the record, the requester may bring a mandamus action asking a court to order release of the record or part of the record. Current law requires the court to award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any such action.

The Wisconsin Supreme Court decided in 2022 that a requester prevails in whole or in substantial part only if the requester obtains a judicially sanctioned change in the parties’ legal relationship, for example, a court order requiring disclosure of a record. See, *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57. Under the supreme court’s decision, a requester generally is not entitled to attorney fees and costs if the authority voluntarily or unilaterally without a court order provides contested records after the requester files an action in court.

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This bill supersedes the supreme court's decision in *Friends of Frame Park*. Under the bill, a requester has prevailed in whole or in substantial part if the requester has obtained relief through any of the following means:

1. A judicial order or an enforceable written agreement or consent decree.

2. The authority's voluntary or unilateral release of a record if the court determines that the filing of the mandamus action was a substantial factor contributing to that voluntary or unilateral release.

This standard is substantially the same as the standard that applies for a requester to obtain attorney fees and costs under the federal Freedom of Information Act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 19.37 (2) (a) of the statutes is renumbered 19.37 (2) (a) 1.

2 **SECTION 2.** 19.37 (2) (a) 2. of the statutes is created to read:

3 19.37 (2) (a) 2. A requester has prevailed in whole or in substantial part under
4 this paragraph if the requester has obtained relief through any of the following
5 means:

- 6 a. A judicial order or an enforceable written agreement or consent decree.

- 7 b. The authority's voluntary or unilateral release of a record if the court
8 determines that the filing of the action under sub. (1) was a substantial factor
9 contributing to that voluntary or unilateral release.

10 **(END)**