



Greg Brockmeyer  
Director of Administration

**COUNTY OF DANE**  
DEPARTMENT OF ADMINISTRATION

**RISK MANAGEMENT**

Room 425 City-County Building  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703-3342  
608/266-4134  
FAX 608/283-2973 TTY 608/266-4941

DAN LOWNDES  
Risk Manager and  
Records Control Officer

January 10, 2020

Brenda Konkel  
Via email to: [Brendakonkel@gmail.com](mailto:Brendakonkel@gmail.com)

RE: Open Records Request

Dear Ms. Konkel:

I am not the custodian of the records you are requesting, but I have been asked to assist in compiling the response to your request for:

*all records, electronic or written, including texts, emails, and other correspondence sent through county or personal devices and accounts, regarding the process and content for the substitute resolutions for the Operating and Capital Budgets and the final tax levy resolution. Additionally, please send any records (as described above) related to "revised" amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting.*

First, Wis. Stats. § 19.35(1)(h) requires requests for records to reasonably describe the requested records. I have consulted with our Division of Information Management within the Department of Administration and learned that Dane County cannot search for emails pertaining to a **general topic** the way an internet search engine can search for web pages. Specifically, Information Management cannot search for emails about "*the substitute resolutions for the Operating and Capital Budgets*" or "*the final tax levy resolution*" or "*revised*" amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting." Therefore, based upon Wis. Stat. § 19.35(1)(h), I must deny your request. **See State ex rel. Gehl v. Connors**, 742 N.W.2d 530 (2007) (the purpose of the time and subject matter limitations is to prevent unreasonably burdening a records custodian by requiring the records custodian to spend excessive amounts of time and resources deciphering and responding to a request). I would also draw your attention to Wis. Stats. § 19.35(1)(am) which states that "personnel records" that are not indexed, arranged, or automated in a way that the personnel record can be retrieved by the authority maintaining the record are outside the scope of the open records law. In light of **Gehl**, it is reasonable to deem other types of records, not just personnel records, that are not indexed, arranged, or automated in a way that the record could be retrieved by the authority are also outside the scope of the open records law. With regard to your request, Dane County has not indexed, arranged or automated **all** records related to regarding the process and content for the substitute resolutions for the Operating and Capital

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Budgets, the final tax levy resolution or the "revised" amendments that were presented to Personnel and Finance at the November 5th Personnel and Finance Committee Meeting.

However, in the spirit of open government, please feel free to supply us with the *names* of the individuals whose *countyofdane.com* email you would like searched as well as *search terms* that Information Management may use to search for emails responsive to your request. In other words, you could tell us the exact terms you want to see in requested emails, then use the word "and" or the word "or" between the terms you have identified so that Information Management can conduct an email search.

Please know that after we receive your revised request, Dane County will review the search results and Dane County may redact parts of certain e-mails containing information that is exempted from disclosure. Materials that may be withheld or redacted include drafts, preliminary computations, and personal notes prepared for the drafter's personal use and have no relation to the drafter's office. Such documents are not "records" as that term is used in Wisconsin's Public Records Law, and, therefore, are not subject to disclosure.

Second, Dane County is not the custodian of records sent to or from *personal* devices unless those documents were sent from or received by a county email address, in which case, they would be found using the email search described above. Therefore, to the extent that a response is required to this part of your request, it is denied.

Finally, records relating to the Operating and Capital Budgets and Personnel and Finance committee meetings are available to the public here: <https://dane.legistar.com/Legislation.aspx>. To the extent that your request is for additional copies of those documents, it is denied as those records are readily available on the County's website. See page 6 of the Wisconsin Attorney General's Guidance on Wisconsin's Public Records Law (available here: <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>) citing *Stone v. Board of Regents*, 741 NW 2d 774 (Wis: Court of Appeals 2007).

Pursuant to. § 19.35(4)(b) Wis. Stats, I am required to inform you that if you disagree with any determinations contained in this letter, you may seek review by mandamus under § 19.37(1) Wis. Stats, or by application to the attorney general or a district attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Lowndes", with a long horizontal flourish extending to the right.

Dan Lowndes  
Risk Manager  
& Records Control Officer