

**CENTER FOR MEDIA & DEMOCRACY**  
KATHLEEN METER LOUNSBURY,  
THE PROGRESSIVE INC., AND  
JUD LOUNSBURY,  
Plaintiffs,

Case No.: 2015 CV 1289

v.

**SCOTT WALKER,**  
OFFICE OF THE GOVERNOR,  
WISCONSIN DEPARTMENT OF ADMINISTRATION,  
NATHAN E. SCHWANZ, MICHAEL G. HEIFETZ,  
PATRICIA REARDON AND  
SCOTT NEITZEL,

Defendants.

**AFFIDAVIT OF DAVID CLARENBACH IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

STATE OF WISCONSIN     )  
  )  
COUNTY OF DANE         )

David Clarenbach, being first sworn under oath, testifies as follows:

1. I make this affidavit on the basis of my own personal knowledge.
2. I represented the 78<sup>th</sup> Assembly District in the Wisconsin State Assembly for nine terms, from 1975 to 1993.
3. I served in the Wisconsin State Assembly when the modern Wisconsin Public Records Law was developed.

4. The Public Records Law passed the Wisconsin Senate as Engrossed 1981 Senate Bill 250, and provided that “[r]ecord does not include drafts, notes, preliminary computations, and like materials prepared for the originator’s personal use.”
5. I was one of three sponsors of Assembly Substitute Amendment 1 to 1981 Senate Bill 250.
6. Assembly Substitute Amendment 1 added the language “or prepared by the originator in the name of a person for whom the originator is working” to this provision. Attached as Exhibit A is a true and correct copy of the relevant pages of the Legislative Reference Bureau drafting file requesting this amendment.
7. The amendment passed and this language remains part of the Public Records Law to this day at Wis. Stat. § 19.32(2).
8. I did not intend this language to broaden the list of exempted documents from disclosure under the Public Records Law. The intent of the Public Records Law and its amendments was to ensure the broadest possible public access to all records about the public’s business, for both the legislative and executive branches.
9. I did not intend for this language to shield the executive budget drafting process from public view, nor did I intend to exclude documents relating to the development of the budget from the definition of “record.”
10. I do not believe that the deliberative process is a public policy interest that can outweigh the public’s interest in disclosure for purposes of the Wisconsin Public Records Law.

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DAVID CLARENBACH

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission: \_\_\_\_\_

# EXHIBIT A

LRB—FILE COPY  
(Return to Room 211 North)

ASSEMBLY SUB. AMDT 1 TO S 250 BILL \_\_\_\_\_

4/4/87

Offered by Representative(s) \_\_\_\_\_

JACOBUS LEE

LEE

Committee on \_\_\_\_\_

1 funds from a county or a municipality, as defined in s. 59.001 (3), and  
2 which provides services related to public health or safety to the county  
3 or municipality; or a formally constituted subunit of any of the  
4 foregoing.

5 (2) "Record" means any material on which written, drawn, printed,  
6 spoken, visual or electromagnetic information is recorded or preserved,  
7 regardless of physical form or characteristics, which has been created or  
8 is being kept by an authority. "Record" includes, but is not limited to,  
9 handwritten, typed or printed pages, maps, charts, photographs, films,  
10 recordings, tapes (including computer tapes), and computer printouts.

11 "Record" does not include drafts, notes, preliminary computations and like  
12 materials prepared for the originator's personal use; materials which are  
13 purely the personal property of the custodian and have no relation to his  
14 or her office; materials to which access is limited by copyright, patent  
15 or bequest; and published materials in the possession of an authority  
16 other than a public library which are available for sale, or which are  
17 available for inspection at a public library.

*or prepared by the originator in the name of a person for whom the originator is working*

18 (3) "Requester" means any person who requests inspection or copies  
19 of a record.

20 19.33 LEGAL CUSTODIANS. ~~Every~~ Authority shall designate in  
21 writing one or more positions occupied by an officer or employe of the  
22 authority or the unit of government of which it is a part as a legal  
23 custodian to fulfill its duties under this subchapter. In the absence of  
24 a designation the authority's highest ranking officer and the chief admin-  
25 istrative officer, if any, are the legal custodians for the authority.  
26 The legal custodian shall be vested by the authority with full legal power  
27 to render decisions and carry out the duties of the authority under this  
28 subchapter. Each authority shall provide the name of the legal custodian

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