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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Senate Bill 789**

**Senate Amendment 1 and  
Assembly Amendment 1**

### 2023 SENATE BILL 789

Under current law, an authority to whom a request for records has been made under the Open Records Law may impose a fee upon the request for certain, specific costs related to providing the requested records. Namely, an authority may impose a fee for the actual, necessary, and direct costs of:

- Reproducing and transcribing the record, unless a fee is otherwise specifically established or authorized to be established by law.
- Photographing and photographic processing of the record, if the authority provides a photograph of the record, the form of which does not permit copying.
- Locating the record, if the cost of locating the record is \$50 or more.
- Mailing or shipping a copy or photograph of the record, if mailed to the requestor.

2023 Senate Bill 789 permits an authority that is a law enforcement agency to impose a fee on the requestor for the actual, necessary, and direct cost of redacting recorded video content to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law.

### SENATE AMENDMENT 1

Senate Amendment 1 provides that a law enforcement agency may also impose a fee for the actual, necessary, and direct cost of redacting **audio** content to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law.

### ASSEMBLY AMENDMENT 1

Assembly Amendment 1 places limits on the situations in which a law enforcement agency may impose a fee for redacting audio or video content.

Under the amendment, a law enforcement agency may not impose a fee with respect to a request for records containing audio or video content for which all of the following apply:

- If the requester is an individual, the requester provides written certification to the authority that the requester will not use the audio or video content for financial gain, not including an award of damages in a civil action.<sup>1</sup>
- During the calendar year in which the law enforcement agency receives the request, the same requester has not made more than 10 requests to the law enforcement agency for records containing

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<sup>1</sup> Any individual who provides a false certification is subject to a forfeiture of \$10,000 for each violation.

audio or video content, including the current request, but excluding any request in which the requester is an individual directly involved in the event or the requested records relate to a shooting involving an officer of a law enforcement agency, as discussed in more detail below.

Also under the amendment, a law enforcement agency may not impose the fee with a respect to a request for records containing audio or video content if any of the following apply:

- The requester is an individual directly involved in the event to which the records relate or is that individual's attorney, other authorized representative, or, if the individual is under the age of 18, the individual's parent or guardian.
- The event to which the requested records relate is a shooting involving an officer of a law enforcement agency.
- Prior to fulfilling the request, the law enforcement agency did not provide the requester in writing an estimate of the amount of the fee to be charged.

Finally, in calculating the actual, necessary, and direct cost of redacting audio or video content, that cost must be based on the pay rate of the law enforcement agency's lowest paid employee capable of performing the task.

## **BILL HISTORY**

Senator James offered Senate Amendment 1 to Senate Bill 789 on January 9, 2024. On February 16, 2024, the Senate adopted Senate Amendment 1 on a voice vote and passed the bill, as amended, on a vote of Ayes, 22; Noes, 10.

Representative Spiros offered Assembly Amendment 1 on February 12, 2024. On February 15, 2024, the Assembly adopted Assembly Amendment 1 on a voice vote, and concurred in the bill, as amended, on a vote of Ayes, 94; Noes, 3. On February 20, 2024, the Senate concurred in Assembly Amendment 1 on a voice vote.

For a full history of the bill, visit the Legislature's [bill history page](#).

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