

***Office of Internal Audit***

Public Records Requests



August 2, 2023

## **Executive Summary**

We completed an audit of the Public Records Requests managed by the Office of Legal Services (OLS). This audit was completed in accordance with the fiscal year (FY) 2022–2023 Biennial Audit Plan to evaluate the design and operating effectiveness of internal controls over public records requests.

Our audit focused on public records requests processed between January 1, 2021–March 31, 2023. We identified a total of 67 public records requests during our audit period. We also reviewed public records notices, policies and procedural documents, and Information Technology’s (IT’s) processes.

Overall, we found most of the areas to be operating effectively with the public records requests processes. However, we identified a few opportunities for improvement related to these processes to obtain greater internal controls and operational efficiency.

Specifically, we provided the following recommendations:

- Update the public records notices to change the section from “the cost of copies of records” to “fees” to precisely reflect what it is describing. In addition, update the information on sales tax to only be charged when the records are produced expressly for the purpose of sale.
- The policies and procedures on public records requests were last updated in 2016. Most of the information reflects the current practice for completing a public records request. However, we identified a few areas where certain information has not been updated to reflect current practices.
- Ensure that access to the public records requests folders is appropriately restricted. We found all employees had modify access to the folders where some requests contained sensitive information like individual personal information and/or medical records.

## **Audit Objective and Scope**

The audit objective was to review ETF's public records requests processes to determine if they were operating efficiently and effectively. We also reviewed public records notices, policies and procedural documents, IT's processes, and selected some public records to review. The scope of our review was any public records request from January 2021–March 2023.

Our audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing.

We excluded from our review record retention policies and provisions of Wis. Stat. § 16.61.

## **Background**

Wisconsin public records law<sup>1</sup> provides information on the workings of government and the official acts of public officers and employees. Its goal is to provide access to records that assist the public by providing opportunity for public oversight of government.

A record is any material on which written, drawn, printed, spoken, visual, or electronically generated information has been created or kept. In general, the definition of a record does not include drafts, notes, preliminary computations, and materials prepared for the originator's personal use. However, regardless of how marked, if such preliminary materials are used and circulated as if final, they can become records.

Chapter 40<sup>2</sup> has a specific exemption to the public records law in Wis. Stat. § 40.07<sup>3</sup>. Individual personal information and medical records are specifically exempt from disclosure with limited exceptions provided in law.

IT staff are involved in public records requests typically when emails are requested. IT has written procedures on its processes and a specific form OLS and others at ETF must complete for these searches. IT staff use a Microsoft tool to query selected inbox(es) using various parameters like date range, keywords, etc. IT staff provide the query results to OLS staff for their review.

---

<sup>1</sup> Wis. Stats. §§ 19.31 – 19.39.

<sup>2</sup> Wisconsin Statute Chapter creating ETF and the benefits it administers.

<sup>3</sup> There are exceptions to this rule, but they are narrow and specific to the person whose record contains the information, a public employee in the discharge of the employee's official duties, a court order, Department of Revenue for tax purposes, and other reasons.

## Results and Recommendations

### *Positive Results*

We found no exceptions in our testing of public records requests, and all were fulfilled as soon as practicable and without delay. We found that the spreadsheet OLS uses to monitor public records requests a good control and working effectively. Finally, we found IT's processes documenting how to obtain emails helpful and very easy to follow.

### *Findings, Recommendations, and Management Responses*

#### 1. Public Records Notices Information

##### **Finding**

ETF has public records notification information on its website providing members of the public with how to request and obtain access to ETF and its attached boards' records. These notices contain a brief description of ETF and/or its boards, how to inspect records, cost of copies of records, etc. We found the notices contained all the necessary information to allow a member of the public to request a public record. We did identify the cost of copies of records section is covering more than just the cost of copies as it covers locating costs and postage as well. In addition, it says that sales tax will be charged for the cost of copies. However, Wisconsin Administrative Code<sup>4</sup> exempts this, unless the record is produced expressly for the purpose of sale<sup>5</sup>.

##### **Risk/Effect**

Members of the public could be charged sales tax when they should not be.

##### **Recommendation**

We recommend that ETF update its public records notices to change the "cost of copies of records" to "fees" to precisely reflect what the section is describing. In addition, update the information on sales tax to only be charged when the record is produced expressly for the purpose of sale.

*Significance: Low-Medium*

##### **ETF Management Response**

This recommendation has been completed. OLS updated ETF's public records notice to change the "cost of copies of records" to "fees." OLS also updated the information on sales tax to reflect that the tax will only be charged when the record is produced expressly for the purpose of sale.

---

<sup>4</sup> Wis. Admin. Code Ch. Tax 11.05(3)(q).

<sup>5</sup> We did not identify any public records requests where sales tax was charged.

**Responsible Staff:** Dan Hayes, OLS Attorney.

**Completion Date:** August 2023

## **2. Policies and Procedures Update**

### **Finding**

ETF also has internal policies and procedures for staff to follow when fulfilling public records requests. Each of these documents was last updated in July 2016. Most of the information reflects the current practice for completing a public records request. However, we identified a few areas where certain information has not been updated to reflect current practices. In addition, we also identified a few links to resources and other documents that were no longer working.

### **Risk/Effect**

Staff across ETF might be completing public records requests inconsistently.

### **Recommendation**

We recommend that ETF's internal policies and procedures documents be updated to reflect the current practice for completing public records requests, and any links to resources and other documents also be updated. Once these documents have been updated, notify the Legal Custodians and others who are responsible for completing open records requests.

*Significance: Low-Medium*

### **ETF Management Response**

We will be updating ETF's internal policies and documents.

**Responsible Staff:** Diana Felsmann, OLS General Counsel.

**Completion Date:** October 2023

## **3. Public Records Requests**

### **Finding**

We reviewed a sample of public records requests to ensure that ETF's policies and procedures were followed from acknowledging the request, to fulfilling it as soon as practicable and without delay, and ensuring all requests and responses were logged in OLS's tracking spreadsheet. Based on our review, we found that the public records requests were fulfilled as soon as practicable and without delay. We also found that OLS's spreadsheet tracked all public records requests and responses. We did identify two minor items that we verbally communicated to management.

OLS maintains all public records information including the request and any response(s) in folders on ETF's shared network drive. We reviewed access to these folders to ensure that only appropriate individuals had access. Based on our review, all ETF staff had access to the folders including modify rights. Given the sensitive nature of some of these requests, access should be restricted to only the appropriate individuals.

**Risk/Effect**

Staff having more access than they need for their job duties increases the risk of sensitive data being reviewed and/or modified.

**Recommendation**

We recommend that OLS appropriately restrict access to its public records requests folders.

*Significance: Medium-High*

**ETF Management Response**

This recommendation has already been completed. The Bureau of Information Technology Services has already restricted access to the public records request folders to ETF's Office of Legal Services.

OLS' understanding is that this audit identified one request in the public records request folder that contained medical information and another that contained employer information. The first request was sent to ETF by a member who referred to a request for a recording of a call with an outside vendor as a "public records request." While that request was not a public records request, the request and response were saved in the public records folder.

The second request was a public records request from law enforcement for employer information. The request resulted in a subpoena being sent to ETF. Even though this request transformed from a public records request into a subpoena, the requests and responses were all saved in the public records folder.

**Responsible Staff:** Diana Felsmann, OLS General Counsel.

**Completion Date:** July 2023

*Process Improvement Consideration and Other Items to Note*

We provided the following process improvement suggestion for management's consideration to improve the efficiency and effectiveness of public records requests:

- Consider if the internal policies and procedures documents should be part of an annual public records training for staff who are Legal Custodians and others that normally work on public records requests.

We discussed the potential approaches to mitigate the limitations of the Microsoft tool IT uses in supporting ETF fulfilling its public records requests.

- We identified three contractors who had access to the Microsoft tool used to search mailboxes. IT said that these individuals use the tool for other activities like offboarding a user, exporting mailboxes, and other items. Access to the tool cannot be restricted because it is either you have access, or you do not. In addition, the tool itself is controlled by the Department of Administration (DOA) through the State's Office 365 license. Based on IT's explanation, contractors having access appears acceptable. However, ETF should consider the duties they complete and if access to the Microsoft tool can be removed, if a periodic review of the access log can occur, or if additional FTE employees are able to complete the work.

## **Audit Methodology**

The OIA conducted this audit by performing the following testing procedures:

- Public Records Notices – We reviewed ETF's website providing members of the public how to request and obtain access to ETF and its attached boards records.
- Policies and Procedures – We reviewed ETF's internal policies and procedures for staff to follow when working on fulfilling public records requests.
- IT's Processes – We reviewed IT's processes for fulfilling public records requests. We also ensured that access to the Microsoft tool was appropriate.
- Public Records Requests – We sampled public records requests from a total population of 67 to ensure the requests were fulfilled as soon as practicable and without delay.
- Access to OLS Folders – We reviewed all ETF employees that had access to the OLS Folders where public records requests are stored to ensure access was appropriate.