



LEGAL ISSUES  
RELATING TO COUNTY GOVERNMENT

# Daniel's Law

## What Is It and How Does It Impact Counties?

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The Daniel Anderl Judicial Security and Privacy Act of 2022 (commonly referred to as “Daniel’s Law”) was signed into law in December 2022 as part of the National Defense Authorization Act, H.R. 7776. Daniel’s Law was enacted to protect judges and their families by requiring federal agencies to “maintain the confidentiality of judges’ personally identifiable information upon request; authorize funding for state and local governments to adopt similar measures; prohibit data brokers from selling, licensing, trading, purchasing, or otherwise providing or making available for consideration judges’ personally identifiable information; and create an enforceable mechanism for judges and their immediate family members to secure removal of their personally identifiable information from the Internet.”<sup>1</sup>

Some federal officials have taken the position the legislation “does not pertain to state or local government agencies *unless* they apply for grant funding to either create a program or improve on an existing program that protects the location of a federal judge” (emphasis added). However, other associations have taken the position the legislation *does* pertain to local governments. The analysis below attempts to provide clarity for Wisconsin counties.

### ► Daniel’s Law

The new law applies to three categories of entities — government agencies, state and local governments (for the limited purposes of securing grants), and data brokers and other businesses.

**Government agencies.** The law provides that an at-risk individual, broadly defined to include all federal judges and their immediate families, may “file written notice of the status of the individual as an at-risk individual, for themselves and immediate family members, with each Government agency that includes information necessary to ensure compliance with this section; and request that each Government agency ... marks as private their covered information and that of their family members.”<sup>2</sup> Upon receipt of such a notice, government agencies “shall remove the covered information of the at-risk individual or immediate family member from publicly available content not later than 72 hours after such receipt.”<sup>3</sup>

Covered information includes, among other things, a home address, a home or personal mobile telephone number, a personal email address, a Social Security number

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or driver's license number, a license plate number, the identification of children, and the full date of birth.<sup>4</sup> A knowing violation by a government agency may result in a fine not greater than \$4,000 and an award to the at-risk individual or immediate family of court costs and reasonable attorney's fees.<sup>5</sup> The new law directs that it "shall be broadly construed to favor the protection of the covered information of at-risk individuals and their immediate family members."<sup>6</sup>

**State and local governments.** A grant program is specifically referenced that provides for the attorney general to "make grants to prevent the release of covered information" to an entity that is a state or unit of local government (or an agency thereof) that "operates a State or local database or registry that contains covered information."<sup>7</sup> An entity seeking a grant must submit to the attorney general an application.<sup>8</sup> The grant covers the creation or expansion of programs that are designed to protect judges' covered information, including the redaction of covered information from public records, the development or improvement of protocols, procedures and policies to prevent the release of covered information, modifying or improving existing databases, and the development of confidential opt-out systems.<sup>9</sup> Any state or local governments that receive grant funds must then submit to the comptroller general of the United States a report on data required under the section.

**Data brokers.** The third category of covered entities includes data brokers and "other persons and businesses." A data broker may not "knowingly sell, license, trade for consideration, transfer, or purchase covered information of an at-risk individual or immediate family members."<sup>10</sup> A data broker is defined as an entity that "collects and sells

or licenses to third parties the personal information of an individual with whom the entity does not have a direct relationship."<sup>11</sup> Exclusions under the definition of data broker relate to engaging in news reporting, providing 411 directory information, and providing alert services for health or safety purposes, among others.<sup>12</sup>

► **Application to counties**

State and local government agencies are unlikely to be considered a "government executive agency" subject to the requirements above.<sup>13</sup> Because state and local government agencies are not an executive department or a government corporation as defined in Section 105 of Title 5, United States Code, the requirements for government agencies under the new law are unlikely to apply to Wisconsin counties.

Next, the law appears to limit the explicit application to state and local governments by detailing the application process for grant funds. An entity seeking a grant must first submit to the attorney general an application for grant funds,<sup>14</sup> suggesting a state or local government that does not submit such an application is not subject to the law's requirements, at least with respect to direct application to state and local governments.

However, with respect to data brokers, it is important to keep in mind the definition of data broker. If a county collects and sells or licenses protected information to third parties, then it likely would fit within the definition of a data broker under the new law.

The law also prohibits any person, business or association from publicly posting or displaying on the Internet covered information of an at-risk individual or immediate family member if a written request to not disclose was made.<sup>15</sup> Here, the law could be read to

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generally include any person that receives a written request to not disclose protected information. In the event a federal judge (or his or her designee, which is defined broadly under the law to include, among others, the chief judges of the various federal courts<sup>16</sup>) was to make such a request of a county, a county should consider taking the steps outlined in the new law to protect covered information.

Any county department that receives a notice could subject a county to the requirements of the new law. Therefore, it is important for all department heads in a county to be aware of the law's requirements and to have a process in place to notify other departments in the event a notice under the law is received.

Counties should bear in mind that because of the possibility that a county is considered a data broker or could receive a written request made pursuant to the new law,<sup>17</sup> processes should be put in place to meet the deadline under the new law. The requirements relating to state and local governments, data brokers and other businesses "shall take effect on the date that is 120 days after the date of enactment of this Act."<sup>18</sup> With the president signing the National Defense Authorization Act, H.R. 7776, on December 23, 2022, counties had until April 23, 2023, to have compliance plans in place.

### ► Conclusion

The above framework suggests a county department that collects and sells or licenses protected information to third parties would likely fit within the definition of a data broker under the new law. It is important that counties work closely with their corporation counsel to determine

the process for responding to a request submitted under the law. If you have any questions surrounding this complex topic, please do not hesitate to contact the association or the authors at [jcurtis@attolles.com](mailto:jcurtis@attolles.com) or [aphillips@attolles.com](mailto:aphillips@attolles.com). ■

*Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president and CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.*

1. See National Association of Attorneys General, NAAG Supports Daniel's Law, Dec. 14, 2022, [naag.org/policy-letter/supports-daniels-law/#:~:text=NAAG%20supports%20the%20Daniel%20Anderl.to%20keep%20federal%20judges%20safe](https://naag.org/policy-letter/supports-daniels-law/#:~:text=NAAG%20supports%20the%20Daniel%20Anderl.to%20keep%20federal%20judges%20safe) (emphasis added)
2. National Defense Authorization Act, H.R. 7776, Section 5934(a)(1)(A)-(B)
3. *Id.*, Section 5934(a)(2)
4. See *Id.*, Section 5933(2)(A)(i)-(viii)
5. *Id.*, Section 5934(f)(3)
6. *Id.*, Section 5937(b)
7. *Id.*, Section 5934(c)(1)(A)
8. *Id.*, Section 5934(c)(1)(B)
9. *Id.*, Section 5934(c)(2)
10. *Id.*, Section 5934(d)(1)
11. *Id.*, Section 5933(3)(A)
12. *Id.*, Section 5933(3)(B)
13. A government agency under Section 5933(5) of the National Defense Authorization Act, H.R. 7776, includes "an Executive agency, as defined in Section 105 of Title 5, United States Code." There, "executive agency" means an executive department, a government corporation and an independent establishment. Other federal codes (see the Freedom of Information Act, 5 U.S.C. § 552) limit executive agency to federal agencies. State and local government agencies are not covered by the Privacy Act referenced in Section 552. See, e.g., *Clancy v. Fla. Dep't of Corr.*, 782 F. App'x 779, 781 (11th Cir. 2019) [finding Interstate Commission for Adult Offender Supervision to be an agency of compacting states that is not subject to Privacy Act]
14. See National Defense Authorization Act, H.R. 7776, Section 5934(c)(1)(B)
15. See *Id.*, Section 5934(d)(1)(B)(i)
16. See *Id.*, Section 5934(b)
17. See *Id.*, Section 5934(d)(1)(B)(i)
18. See *Id.*, Section 5939(c)(1) and (d)