

Judicial Privacy Act (Part 2)

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Agenda

1. What is the Judicial Privacy Act?
2. Implementation
3. Potential Amendments



What is the Judicial Privacy Act?

2023 Wisconsin Act 235





2023 Wisconsin Act 235

- Enacted March 27, 2024, BUT effective April, 2025
- Establishes privacy protections for judicial officers and a procedure for a judicial officer to complete a written request for protection of the personal information of the judicial officer and the judicial officer's immediate family.



Who is a Judicial Officer (and therefore protected)?

“Judicial officer” means a person who currently is or who formerly was any of the following:

1. A supreme court justice.
2. A court of appeals judge.
3. A circuit court judge.
4. A municipal judge.
5. A tribal judge.
6. A temporary or permanent reserve judge.
7. A circuit, supplemental, or municipal court commissioner.



What is the Exemption?

- The exemption only applies to “personal information” identified in a “written request.”
- Any such personal information is exempt from the WPRL.
- Further, any such personal information is prohibited from being publicly posted or displayed as publicly available content.
 - “Publicly post or display” means to intentionally communicate or otherwise make available to the general public.
 - “Publicly available content” means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person or entity, from the internet, from the government agency upon request either free of charge or for a fee, or in response to a public records request under ch. 19.



What is “Personal Information?”

Under Act 235, “personal information” means any of the following with regard to a judicial officer or any immediate family member of a judicial officer, but does not include information regarding employment with a government agency:

1. a home address.
2. a home or personal mobile telephone number.
3. a personal email address.
4. a social security number, driver’s license number, federal tax identification number, or state tax identification number.
5. a bank account or credit or debit card information (except as required under Wis. Stat. ch. 11).
6. A license plate number or other unique identifiers of a vehicle owned, leased, or regularly used by a judicial officer or an immediate family member of a judicial officer.
7. the identification of children under the age of 18 of a judicial officer or an immediate family member of a judicial officer.
8. the full date of birth.
9. marital status.

An aerial photograph of a city with various buildings and greenery. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

When does the Exemption Apply?

The exemption only applies to

- a judicial officer if such judicial officer actually submits a written request that his or her personal information be withheld from public access; and immediate family members covered by the written request



Process to Claim Exemption

Judicial Officer must submit a written request, which must:

- a. be made on a form prescribed by the Director of State Courts;
- b. specify what personal information must be maintained as private; and
- c. disclose the identity of the judicial officer's immediate family and indicate that the personal information of these family members shall also be excluded to the extent that it could reasonably be expected to reveal personal information of the judicial officer.

Note: the submission of the written request itself must also be treated as confidential.

"Immediate Family" includes any of the following: (1) a judicial officer's spouse; (2) a minor child of the judicial officer or of the judicial officer's spouse, including a foster child, or an adult child of the judicial officer or of the judicial officer's spouse whose permanent residence is with the judicial officer; (3) a parent of the judicial officer or the judicial officer's spouse; and (4) any other person who resides at the judicial officer's residence.



Process to Claim Exemption (cont.)

Judicial officer must also do any one of the following:

- a. send the written request directly to a government agency, person, data broker, business, or association;
- b. if the Director of State Courts has a policy and procedure for a judicial officer to file the written request with the Director of State Court's office to notify government agencies, send the written request to the Director of State Courts; or
- c. a representative from the judicial officer's employer may submit a written request on the judicial officer's behalf, provided that the judicial officer has given written consent to the representative and provided that the representative agrees to furnish a copy of that consent when the written request is made. The representative shall submit the written request as provided in 2.a. or 2.b. The Act requires the Director of State Courts to provide the appropriate officer of a government agency a copy of list of judicial officers requesting protection pursuant to 2.b. each quarter of every calendar year.



For How Long?

Request is valid for 10 years or until the judicial officer's death, whichever is first.



Important **EXCEPTIONS** to the Exemption

Notwithstanding a judicial officer's submission of a written request, a government agency may release a judicial officer's personal information under any of the following circumstances:

1. As required in response to a court order;
2. If a judicial officer or immediate family member of the judicial officer consents to the release of his or her own personal information; or
3. If the judicial officer provides the government agency consent to release the personal information. Wis. Stat. § 757.07(4)(e)2. Note: an immediate family member may only consent to the release of his or her own personal information and not the personal information of the judicial officer. Such consent must be provided on a form prescribed by the Director of State Courts.



Important **EXCEPTIONS** to the Exemption (cont.)

Further, a government agency is permitted to provide access to records containing personal information of a judicial officer to a third party if the third party satisfies any one of the following criteria:

1. The third party possesses a signed consent document, as provided under Wis. Stat. § 757.07(4)(e);
2. The third party is subject to the requirements of 15 USC 6801, *et seq.*; or
3. The third party executes a confidentiality agreement with the government agency.



Special Rule for RODs

The register of deeds shall shield from disclosure and keep confidential documents containing information covered by a written request of a judicial officer under s. 757.07, **if the judicial officer specifically identifies the document number of any document to be shielded** under this subsection. **This subsection applies only to electronic images of documents** specifically identified by a judicial officer as covered by a written request under s. 757.07. The Register of Deeds may allow access to a document subject to protection under this subsection only if the judicial officer consents to the access or access is otherwise permitted as provided under s. 757.07(4)(e).



Special Rule for “public-facing land records websites”

- Any provider of a “public-facing land records website” is required to establish a process for judicial officers and immediate family members of judicial officers to opt out from the display and search functions of their names on the provider’s public-facing land records website. Wis. Stat. § 757.07(4m)(b).
- For example, this requirement would apply to a county GIS website that allows the public to search property tax bills and the like.
- The intent of the Act as evidenced by the plain statutory language appears to be that no information is retrieved if a person searches the name of a judicial officer who opted out.

Implementation

2023 Wisconsin Act 235



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Implementation and Challenges

- Numerous interested parties have undertaken analysis and review of Act 235 and its provisions.
- WCA has participated in several meetings to discuss ambiguities and frequently asked questions
- WCA has prepared a memo to help guide implementation



Implementation and Challenges – Q&A

Q: How does a county know if the person making a written request is actually the judicial officer or an immediate family member of a judicial officer?

A:

- A written request must be made on a form prescribed by the Director of State Courts and must be signed by the judicial officer. Any immediate family members also wishing to have their information protected must be included in the judicial officer's written request; not a separate request.
- Best practice: a government agency should assume the legitimacy of the request, but should confirm the authenticity of the request with the judicial officer.
- Potential amendment: require the form to be notarized



Implementation and Challenges – Q&A (cont.)

Q: Should written requests be recorded?

A: No. Act 235 specifically provides that the submission of a written request must be treated as confidential. Likewise, Act 235 does not provide authority for a Register of Deeds Office to record the written request.



Implementation and Challenges – Q&A (cont.)

Q: Is a government agency required to notify any other government agencies or third parties that the county has received a written request from a judicial officer?

A: Generally, no. Submission of a written request to a governmental agency or unit does not serve as notice to other governmental agencies or units. A judicial officer is responsible for providing a written request to each entity he or she would like to shield his or her personal information. Further, the Act specifically provides that the submission of a written request must be treated as confidential.



Implementation and Challenges – Q&A (cont.)

Q: May a county or other governmental agency otherwise share data containing personal information covered by judicial officer's written request with another governmental agency? What about with another third party (e.g., contract for services)?

A:

- A government agency may need to share a judicial officer's personal information with another entity to the extent required by law or in a contract for services.
- The Act does not directly prohibit a governmental agency from sharing protected personal information with another governmental agency (or another third party) but there is some ambiguity and it may be best practice to do so under Act 235 as currently enacted.
- A government agency may provide access to protected personal information in certain circumstances, including the following:
 1. the third party possesses a signed consent document (from the judicial officer);
 2. the third party is subject to the requirements of 15 USC 6801, et seq. (*i.e.*, certain financial institutions); or
 3. the third party executes a confidentiality agreement with the government agency.



Implementation and Challenges – Q&A (cont.)

Q: A judicial officer's written request is valid for 10 years (or until the judicial officer's death). When does the 10-year period commence?

A: The 10-year period commences upon receipt of the written request. That is, the 10-year period will be specific to each individual requestor.



Implementation and Challenges – Q&A (cont.)

Q: What is considered “publicly available content?” Is it limited to content available on the internet?

A:

- “Publicly available content” includes “any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person or entity, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a public records request under ch. 19.”
- Importantly, “publicly available content” is not limited to documents or records available on the internet, but also includes physical records maintained by a government agency.
- Note that the mailing of certain documents directly to a judicial officer as homeowner would likely not be considered “publicly available content” because the documents are not being displayed publicly (*e.g.*, mailing of Notice of Assessments for Open Book or Board of Review, tax bills, etc.).



Implementation and Challenges – Q&A (cont.)

Q: What does “home address” mean? Does “home address” include anything more than just the property’s address?

A:

- “Home address” is defined by Act 235 to include “a judicial officer’s permanent residence and any secondary residence affirmatively identified by the judicial officer.” “Home address” does not include a judicial officer’s work address.” Based on this definition and the context in which “home address” is used in the Act, the term is presumably limited to the actual mailing address of the property.
- Does not necessarily need to be a home owned by the judicial officer or in the judicial officer’s name (e.g., could apply to a rented apartment, a home owned by a trust, etc.).
- Judicial officers may also designate “secondary addresses.”



Implementation and Challenges – Q&A (cont.)

- Q:** What about other statutory processes requiring a county to post or public legal notices containing a judicial officer's home address (*e.g.*, a redemption notice, notices for the sale of tax delinquent real estate, etc.)?
- A:** Act 235 does not make an exception for other statutory processes requiring the public posting or publishing of addresses. If a judicial officer's home address is subject to a written request, the home address cannot be publicly posted or displayed.



Implementation and Challenges – Q&A (cont.)

- Q: Wis. Stat. § 59.43(1r) requires the Register of Deeds to keep confidential electronic images of certain documents identified by a judicial officer in a written request. What about physical records (e.g., microfiche cards)? Must these documents be shielded from being publicly posted or displayed pursuant to Wis. Stat. § 757.07(2)?**
- A:** No, the Register of Deeds is only required to prohibit access to electronic images of documents identified in a written request. Section 59.43(1r), on its face, does not apply to physical records. However, clarifying legislation affirming this interpretation would provide certainty to Registers of Deeds.



Implementation and Challenges – Q&A (cont.)

Q: Do a government agency's employees need to sign confidentiality agreements?

A: No. A government agency's employees are not required to sign confidentiality agreements in order to access personal information subject to a written request. A government agency is only prohibited from making such personal information publicly available and available to third parties. Only third parties who will be provided access to protected personal information are required to sign confidentiality agreements. That said, it would seem prudent for public agencies to require training and require employees to acknowledge their obligation to shield information under Act 235.



Implementation and Challenges – Q&A (cont.)

Q: Is a Register of Deeds a “data broker” as defined in the Act?

A: No. A “data broker” only includes “commercial entities,” and the Register of Deeds is not a commercial entity.

Q: Many Register of Deeds sell personal information, including images and indexes. Will the Register of Deeds be required to redact a judicial officer’s personal information subject to a written request?

A: Yes, unless the purchasing entity has signed a confidentiality agreement prohibiting further disclosure.

Q: What if a judicial officer requests to have a document or record maintained by the Register of Deeds shielded and the document also includes personal information of third parties (e.g., a recorded easement)? Can the third party be given access to the recorded document?

A: In this type of situation, it seems that the Register of Deeds should provide access to or provide a copy of the record with the judicial officer’s personal information redacted from the record (despite the high likelihood of the third party already knowing to whom the redacted information pertains). The Register of Deeds may also seek the written consent of the Judicial Officer to release the record without redacting.



Implementation and Challenges – Q&A (cont.)

- Q:** The Act permits a judicial officer and immediate family members to opt out from the display and search functions of their names on a public-facing land records website, that allows users to “search and retrieve” real estate records. Does the provider need to prohibit the ability to search for a judicial officer altogether, or is it sufficient that the user is unable to retrieve the searched information?
- A:** It appears that a provider would be in compliance with Act 235 so long as a user is unable to retrieve the judicial officer’s personal information even if searched. It would be impossible to stop a person from searching any name they want in the system (*i.e.*, from typing a judicial officer’s name in a search box if that functionality exists). The key seems to be stopping the system from “retrieving” (and therefore displaying) the information.



Implementation and Challenges – Q&A (cont.)

Q: Can a government agency simply delete a judicial officer’s name from a database that displays the judicial officer’s name and home address? In other words, if a home address does not have a name associated with it, does the home address need to be shielded?

A:

- It depends on the type and source of the personal information. The mere fact a name is not connected with a home address is not enough when it comes to “publicly available content.”
- With respect to publicly posting or displaying publicly available content, the Act does not distinguish between situations in which the judicial officer's name is directly associated with the home address and those in which it is not.
- Conversely, the Act only requires that the provider of a public-facing land records website (*e.g.*, a county GIS website) establish a process for judicial officers and immediate family members of judicial officers to opt out from the display and search functions of their names on the website. The Act does not require the provider to delete or otherwise shield addresses.

Potential Amendments

2023 Wisconsin Act 235





Amendments

- WCA is working with stakeholders to provide feedback and revisions to the Act for potential inclusion in amending language
- The goal is to make sure the Act is clear and able to be implemented in a way that best allows interested parties to accomplish the legislature's policy goals.



Clarifying Amendments

- Amendments seeking to:
 - Make it clear that the register of deeds and public land records websites are only required to comply with Wis. Stat. §§ 59.43(1r) and 757.07(4m), respectively.
 - Clarify that a judicial officer's address may be displayed so long as it is not associated with the judicial officer's name.
 - Provide exceptions for public notices otherwise required to be given by law (e.g., tax deeds)
 - Ensure that government agencies may share protected information with other government agencies for government purposes without the need for confidentiality agreements.



Clarifying Amendments (cont.)

- Amendments seeking to:
 - Permit government agencies to designate a responsible officer for receipt of written request, compliance, etc.
 - Ensure no liability for government agencies and no personal liability for employees except for intentional or reckless actions.
 - Define the term “secondary address.”



What's on Deck?

- Many states have adopted or are considering laws similar to Act 235.
- Many states have broadened the categories of officials entitled to the benefits of such privacy laws.
- Police officers/sheriff's deputies? Courthouse employees? Politicians?

