

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: April 27, 2012

To: Interested Parties

From: J.B. Van Hollen
Attorney General

Subject: Effect of 2011 Wisconsin Act 283 on the official duties of law enforcement agencies and other public entities under the Wisconsin public records law

My office has received numerous inquiries about the effect of 2011 Wisconsin Act 283 (“Act 283”) on the responsibilities of law enforcement agencies and other public entities responding to public records requests pursuant to Wis. Stat. §§ 19.31–19.39.

Act 283 takes effect today, April 27, 2012. It creates three new statutory provisions related to disclosure by public officials, employees, or agencies of personally identifying information of victims or witnesses. These new statutory provisions are:

950.04(1v)(ag) [Victims of crimes have the right] To be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies. This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.

950.04(1v)(dr) [Victims of crimes have the right] To not have his or her personal identifiers, as defined in s. 85.103 (1) and including an electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

950.04(2w)(dm) [Witnesses of crimes have the right] To not have his or her personal identifiers, as defined in s. 85.103 (1) and including an electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

Act 283 was intended to protect victims and witnesses from inappropriate and unauthorized use of their personal identifiers for purposes unrelated to the proper execution of official public duties, such as the “sexting” of crime victims by a former District Attorney. Act 283 was not intended to preclude law enforcement agencies and other public entities from performing their official duties under the Wisconsin public records law and other applicable laws, although those duties should be performed with due regard for the privacy, confidentiality, and safety concerns of crime victims and witnesses.

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The new statutory provisions created by Act 283 do not prohibit law enforcement agencies or other public entities from disclosing personal identifiers of crime victims and witnesses in response to public records requests. Making records available for inspection pursuant to the public records law is an official duty of public officers and employees, and a routine function of the government agencies by which they are employed. Providing such information is “an essential function of a representative government and an integral part of the routine duties” of officers and employees responsible for providing such access. Wis. Stat. § 19.31. The statutory presumption of openness “reflects the basic principle that the people must be informed about the workings of their government and that openness in government is essential to maintain the strength of our democratic society.” *Linzmeier v. Forcey*, 2002 WI 84, ¶ 15, 254 Wis. 2d 306, 646 N.W.2d 811.

Privacy, confidentiality, and safety concerns related to victims and witnesses have been and should continue to be carefully considered by records custodians when making public records release decisions, however. These important concerns generally are addressed in case-by-case application of the public records balancing test which, under appropriate circumstances, allows sensitive information to be redacted or withheld. Under that test, public policies supporting protection of the privacy, confidentiality, and safety of crime victims and witnesses must be balanced against the general public interest in disclosure. New Wis. Stat. §§ 950.40(1v)(ag), (1v)(dr), and (2w)(dm), further evidence and emphasize the importance of these public policies, previously recognized in Wis. Const. art. I, § 9; *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ¶ 26, 278 Wis. 2d 216, 692 N.W.2d 263; and *National Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

Act 283 also does not change the obligations of sheriffs, clerks of circuit court, registers of deeds, county treasurers, registers of probate, county clerks and county surveyors to provide access to books and papers “required to be kept” by those officers pursuant to Wis. Stat. § 59.20(3)(a).

Persons with questions about the Wisconsin public records law, the public records balancing test, and public records requests for records containing personal identifiers of crime victims or witnesses may find it helpful to review the Department of Justice’s Public Records Outline, available to view, print, or download free of charge at http://www.doj.state.wi.us/dls/OMPR/2010OMCG-PRO/2010_Pub_Rec_Outline.pdf. Persons with questions also may contact the Department of Justice at (608) 266-3952 to consult with one of the Department’s public records experts.

The foregoing discussion is intended to provide guidance and advice to members of the public pursuant to Wis. Stat. § 19.39. It is not a formal opinion of the Wisconsin Attorney General under Wis. Stat. §§ 165.015, 165.25(3), or 59.42(1)(c).