



REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

Wisconsin Statutes section 950.09(3) authorizes the Crime Victims Rights Board ("Board") to issue reports and recommendations concerning the securing and provision of crime victims' rights and services. The Board has become aware of a situation that provides an opportunity to recommend to public officials, employees and agencies the best practice for protecting a victim's right to have his or her privacy respected and to not have his or her personal identifiers used by a public official, employee, or agency for a purpose unrelated to the official responsibilities of the public official, employee, or agency.

Factual Background

In January, 2015, T. posted bond after being held for crimes against W., which included strangulation and suffocation, false imprisonment, battery and disorderly conduct. W. petitioned the court for a temporary restraining order (TRO) against T. The TRO was granted, filed immediately and made available to the general public on the court's public access computer in the courthouse. The next day, a public official with knowledge of the TRO told an acquaintance of T.'s that W. had filed papers with the court.

W. filed a complaint with the Crime Victims Rights Board against the public official alleging that the disclosure of her name related to the court action violated her crime victim right to privacy and jeopardized her safety. In its review of the case, the Crime Victims Rights Board considered that the court document in question was in the public realm at the time the public official told the acquaintance about it. The respondent to the TRO had not yet been served at the time of the disclosure. The public official's comments about the court filing were not intended to harm W. or to forewarn T. about the TRO, but the disclosure could have resulted in those, or other, unintended consequences.

During its review, the Board also considered that the victim's name and address were withheld in the major case record fields viewable online through the Wisconsin Circuit Court Access website. However, the victim's full name was included in the "additional text" section of one of the fields, rendering the other efforts to protect the victim's privacy online useless.

Statutes Involved

Wisconsin Stat. § 950.04 (1v)(ag) provides that victims of crimes have the right "[t]o 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.”

Wisconsin Stat. § 950.04(1v)(dr) provides that victims have the right “[t]o 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.”

Basis for Recommendations

- Even if crime victim information is available through an internet or a public court record search public officials, employees, and agencies have no less a responsibility to respect the privacy interests of a crime victim and to act with discretion.
- Information about a victim might be of interest to others for a variety of reasons. Sharing even seemingly insignificant information about a victim could cause harm and extreme anxiety, particularly when a victim has personal safety concerns.
- Sharing victim information for non-official reasons erodes the public trust. Victims of crime who cooperate with law enforcement and prosecutors or who seek the court’s protection from victimization have a reasonable expectation that public officials, employees, and agencies will use their personal information for official purposes only.
- Crime victims have a right to not have 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. *See Wisconsin Stat. § 950.04(1v)(dr).*
- Victims of crimes have the right to be treated with fairness, dignity, and respect for their privacy by public officials, employees, or agencies. *See Wisconsin Stat. § 950.04(1v)(ag).*
- The Wisconsin Consolidated Court Automation Program (“CCAP”) compiles open record information from circuit court actions for a public-access internet site called the Wisconsin Circuit Court Access (“WCCA”). According to the *Director of State Courts on Disclosure of Public Information Over the Internet*,¹ data fields that contain victim and witness information are not included in the WCCA public site. The policy notes that some documents completed by court personnel using CCAP occasionally include identifying information about victims. The policy recommends that if victim information must be included that “court personnel entering information concerning crime victims into court documents use initials and dates of birth rather than full names whenever doing so would not defeat the purpose of the court document.” The CVRB urges county personnel to make efforts to avoid identifying victims whenever possible.

¹*Director of State Courts on Disclosure of Public Information Over the Internet* accessed online on 8/26/15 at <https://wcca.wicourts.gov/AB0304.xsl?jsessionid=7B834C7DB3EA7AFA4684940B686DD1AF.render6>

- The CVRB notes that the Wisconsin Supreme Court recently adopted a rule in recognition of the statutory and constitutional right of crime victims to be treated with dignity, sensitivity and respect for their privacy. Wis. Stat. § (Rule) 809.86 (effective 7/1/15) prohibits the identification of crime victims by name in appellate briefs in certain types of cases unless there is good cause to do so. The order adopting the rule also requires the Supreme Court and the Wisconsin Court of Appeals to revise their style manuals in a manner consistent with the rule. The rule was narrowly crafted to apply to specific records publicly available on the internet.

Recommendations:

1. Crime victim information should never be shared for reasons unrelated to official duties by a public official, employee or agency. Public officials, employees and agencies must maintain the highest standards for treatment of crime victim information.
2. The CVRB recommends efforts to avoid and minimize the harm that is created through the widespread publication of, and accessibility to, personal and sensitive information about crime victims on the internet. Public officials, employees and agencies must consider the privacy interests of crime victims who are first thrust into the justice system and subsequently thrust into the public realm through no choice of their own.
3. There are long held values and statutes in Wisconsin that require both transparency of government and sensitivity to crime victims. They are not mutually exclusive. Records custodians and other public officials may find the *Wisconsin Department of Justice Public Records Law Compliance Guide*² helpful when setting policies and analyzing open records requests that involve crime victim information. References to this publication are encouraged. Agency policies regarding the disclosure of records should address victims' rights.

Dated this 30th day of September, 2015.



TRISHA ANDERSON
Chairperson, Wisconsin Crime Victims Rights Board

² The *Wisconsin Department of Justice Public Records Law Compliance Guide* is available online at www.doj.state.wi.us. Click on the Open Government tab. Note that the Section G. discusses special issues including crime victims and their families.