ATTOLLES LAW, s.c.

TO: Wisconsin Counties Association and Interested Parties

FROM: Attolles Law, s.c.

RE: 2023 Wisconsin Act 235

DATE: September 9, 2024

The purpose of this memorandum is to provide a legal analysis and summary of the provisions of 2023 Wisconsin Act 235 (the "Act"), which was enacted by the State Legislature and signed into law by the Governor on March 27, 2024. The Act provides for specific privacy protections for certain judicial officers and immediate family members, including exemptions from the Wisconsin Public Records Law,[1] publicly available records of the Register of Deeds office, and county land records websites.

A "Frequently Asked Questions" section is also included to address questions received from various county government stakeholders.

ANALYSIS AND SUMMARY OF THE ACT

1. For whom does the Act create privacy protections?

The privacy protections created by the Act apply to certain *current and former* "judicial officers." The Act defines "judicial officer" in newly created Wis. Stat. § 757.07(1)(e), which provides:

> "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.

2. Judicial Officer Nomination Papers.

Once the Act takes effect, judicial officers will no longer be required to indicate their address on nomination papers, including nomination papers circulated on behalf of the judicial officer, or on the declaration of candidacy. Wis. Stat. § 8.10(7)(a). Judicial officers are also exempt from

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[1] Wis. Stat. § 19.21, et. seq.

providing their address if they circulate nomination papers on behalf of another candidate seeking a nonpartisan office and/or if they sign nomination papers to support a candidate for a nonpartisan office. *Id*.

The Act requires the Wisconsin Elections Commission to promulgate administrative rules for the administration of these changes and to prescribe a certification of residence form for judicial officers (*i.e.*, certifying that the judicial officer lives in the appropriate geographic location required for holding office without providing their specific address).

3. Records of Judicial Officers ***May*** be Exempt from Disclosure and Availability Under the Wisconsin Public Records Law, Publicly Available Records of the Register of Deeds Office, and County Land Records Websites.

The Act creates a pathway to an exemption from disclosure under the Wisconsin Public Records Law to certain of an individual judicial officer's personal information. Specifically, the Act created new Wis. Stat. § 19.36(14), which provides as follows:

> If a judicial officer, as defined in s. 757.07 (1) (e), submits a written request under s. 757.07 (4), an authority shall not provide access under s. 19.35 (1) to a certification of residence under s. 8.10 (7) or to the personal information, as defined in s. 757.07 (1) (g), of a judicial officer except as provided under s. 8.10 (7) (b).

Importantly, this exemption only applies to (1) a judicial officer if such judicial officer actually submits a written request that his or her personal information be withheld from public access; and (2) two types of information, including (a) a certification of residence, and (b) "personal information" as defined in the Act. An analysis of this process and exemption follows.

A. Written Request for Exemption.

In order for a judicial officer's personal information to become exempt from disclosure and public availability, a judicial officer must submit a written request for protection of his or her personal information. Without such a written request, a judicial officer's personal information must still be made available to the public the same as for any other person under the Wisconsin Public Records Law (subject to any other applicable exemptions or conditions) and other publicly available records.

The process a judicial officer must follow to submit such a written request is provided under new Wis. Stat. § 757.07(4). Importantly, the Act specifically provides that government agencies[2] (among other record holders) may not be found to have violated the requirements of the Act if a judicial officer has not filed a written request. Wis. Stat. § 757.07(4)(a).

[2] "Government Agency" includes counties, county departments, county officers, etc. See Wis. Stat. § 757.07(1)(b).

In order for a written request to be considered effective and as a result exempt a judicial officer's personal information from disclosure, a judicial officer must:[3]

1. Prepare a written request, which must include all of the following:[4]
   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[5] 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.
2. Submit the written request, by doing 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;[6] 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.

A written request submitted by a judicial officer is then valid for 10 years or until the judicial officer's death, whichever occurs first. Wis. Stat. § 757.07(4)(e)1.

Importantly, 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;

[3] Wis. Stat. § 757.07(4)(b)-(d).
[4] Note: the submission of the written request itself must also be treated as confidential.
[5] "Immediate Family" (d) "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; (4) Any other person who resides at the judicial officer's residence.
[6] 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.

2. If a judicial officer or immediate family member[7] 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.[8] Wis. Stat. § 757.07(4)(e)2.

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.

Wis. Stat. § 757.07(2)(b).

B. Personal Information that Can Be Made Exempt from Disclosure and Otherwise from being made Publicly Available.

The Act provides that two types of information can be made exempt from public disclosure upon the proper submission of a written request by a judicial officer: (1) a certification of residence required under Wis. Stat. § 8.10(7) (required in conjunction with nomination papers), and (2) "personal information."

Under the Act, "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] 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.
[8] Such consent must be provided on a form prescribed by the Director of State Courts.

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.

Wis. Stat. § 757.07(1)(g).

Upon submission of a written request by a judicial officer, a government agency is prohibited from publicly posting or displaying[9] publicly available content that includes a judicial officer's personal information. Wis. Stat. § 757.07(2)(a). "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*.[10] (emphasis added). *Id*.

After a government agency receives a written request from a judicial officer, the government agency must remove any such publicly available content including personal information of the judicial officer within 10 business days and may not make any such information publicly available in the future.[11] *Id*.

4. Requirements Related to Land Records and Register of Deeds Offices.

In addition to the personal information protections discussed in Section 3.B. above, the Act also places specific requirements on land records websites and each county Register of Deeds. With respect to the Register of Deeds, the Act provides as follows:

> 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).

[9] "Publicly post or display" means to intentionally communicate or otherwise make available to the general public. Wis. Stat. § 757.07(1)(i).

[10] *i.e.*, the Wisconsin Public Records Law.

[11] However, nothing prohibits a government agency from providing access to records containing the personal information a judicial officer to a third party if the third party: (1) possesses a signed written consent of the judicial officer; (2) is subject to the requirements of 15 USC 6801, et. seq.; or (3) executes a confidentiality agreement with the government agency. Wis. Stat. § 757.07(2)(b).

While this exemption appears broad in scope, it is actually somewhat limited. First, the onus is on the judicial official to personally identify specific documents containing personal information, which should be shielded from public access. The responsibility *does not* fall on the Register of Deeds to identify such documents.

Further, the exemption only applies to electronic images of documents, not to physical records stored in the Register of Deeds office (*e.g.*, microfiche records). Even though it at first may appear that the general rule of nondisclosure and confidentiality applicable to "publicly available content" created by Wis. Stat. § 757.07(2) would also apply to physical records of the Register of Deeds, this likely is not the case. Indeed, "[i]t is a cardinal rule of statutory construction that where two *conflicting* statutes apply to the same subject, the more specific controls." *Return of Prop. in State v. Jones*, 226 Wis. 2d 565, 576, 594 N.W.2d 738, 743 (1999); see also *Mueller v. Edwards*, 2017 WI App 79, ¶ 11, 378 Wis. 2d 689, 695, 904 N.W.2d 392, 395 (opining that "[i]t is a long-standing rule of statutory construction that if two or more statutes are in conflict, the more specific statute controls over the general statute").

In this case, a conflict exists between Wis. Stat. § 59.43(1r) and Wis. Stat. § 757.07(2), because both statutes apply to the same subject (*i.e.*, the confidentiality of personal information of certain judicial officers) and provide different requirements with respect to the Register of Deeds. That is, Wis. Stat. § 59.43(1r) specifically provides that a Register of Deeds must only keep confidential electronic records that are explicitly identified in a written request on the one hand, and Wis. Stat. § 757.07(2) generally requires that any government agency maintain all records (including physical records) confidential when subject to a written request on the other. For this reason, it is probable that the specificity of Wis. Stat. § 59.43(1r) would apply to a Register of Deeds over the generality of Wis. Stat. § 757.07(2). A detailed analysis of this issue can be provided upon request.

Similarly, any provider of a "public-facing land records website"[12] 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.[13] 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. Again, a judicial official must affirmatively choose to opt out from their records (which contain personal information) being publicly available.

5. Penalties for Noncompliance.

The Act provides enforcement mechanisms and penalties for violations of the requirements of the Act (*i.e.*, public disclosure of personal information required to be kept confidential).

[12] "Land records website" means a public website that allows users to search and retrieve a real estate property database or geographic records.

[13] Note: It is highly recommended that counties provide training and education for not only their own employees, but also their municipal counterparts that counties share personal information with for purposes of any municipal land records websites. Moreover, counties must enter into confidentiality agreements with any such municipalities in order to share personal information subject to a written request.

A judicial officer whose personal information is made public in violation of the Act is permitted to bring an action seeking injunctive or declaratory relief in a court of competent jurisdiction. Wis. Stat. § 757.07(5)(a). A government agency found to be in violation of the Act is responsible for costs and reasonable attorneys feeds of the judicial officer. *Id*. However, the Act provides a good faith exception if a government agency publishes personal information on its website in the ordinary course of business (subject to the government agency having otherwise complied with the requirements of the Act (*e.g.*, removing personal information upon receipt of a written request, etc.)).

Additionally, the Act provides criminal penalties for persons who knowingly publicly post or display on the Internet personal information of a judicial officer (or the judicial officer's immediate family) if the person intends such posting or display to create or increase a threat to the health and safety of the judicial officer (or the judicial officer's immediate family), and, under the circumstances, bodily injury or death of the judicial officer (or a member of the judicial officer's immediate family) is a natural and probable consequence of the posting or display. Wis. Stat. § 757.07(5). Any such violation constitutes a Class G felony. *Id*.

6. Effective Date.

The Act is not immediately effective. Rather, the Act becomes effective 13 months after publication (*i.e.*, April 2025), which gives counties and other government agencies time to implement processes and procedures for implementing the requirements of the Act.

FREQUENTLY ASKED QUESTIONS

Q1: 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?

A1: A written request must be made on a form prescribed by the Director of State Courts and must be signed by the judicial officer. Wis. Stat. §§ 757.07(1)(k) and 757.07(4)(d). 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.

A county has 10 business days to comply with such a request, so it would be best practice to follow up with the judicial officer to confirm submission of a written request. However, a county should assume the legitimacy of the request in the event it is unable to confirm the request with the judicial officer prior to the 10 business day deadline in order to avoid any penalties prescribed by the Act.

After 10 business days from the receipt of a written request, the information subject to the written request must not be publicly posted or displayed or be provided in response to a public records request.

Q2: Similarly, how does a county know if the person providing a consent to the release of protected personal information is actually the judicial officer or an immediate family member of a judicial officer?

A2: A consent to the release of public information must also be made in writing on a form prescribed by the Director of State Courts. Wis. Stat. § 757.07(4)(e)2. Again, best practice is for the county to authenticate the request with the requestor. Unlike with the written request to protect information, there is no statutory deadline for compliance upon receipt of a consent to release information, and counties should err on the side of nondisclosure until they are able to verify the identity of requestor (if there is concern as to the authenticity of the request).

An additional protection built into the consent to release process is that an immediate family member of a judicial officer may only consent to the release of his or her own information; not the information of the judicial officer.

Q3: Should the written request and/or consent to release be notarized?

A3: There is no statutory requirement that the written request or consent to release be notarized, but it is possible that the Director of State Courts may require notarization on the prescribed form. If ultimately required, notarization would address the concerns raised in Q1/A1 and Q2/A2.

Q4: Should written requests be recorded?

A4: No. The Act specifically provides that the submission of a written request must be treated as confidential. Wis. Stat. § 757.07(4)(d). Likewise, the Act does not provide authority for a Register of Deeds Office to record the written request.

Q5: Is a county required to notify any other government agencies or third parties that the county has received a written request from a judicial officer?

A5: 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 <u>each</u> 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. Wis. Stat. § 757.07(4)(d).

Q6: 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)?

A6: A county 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) because information sharing with another

government agency (or another third party) is not included in the definition of "publicly post or display" (*i.e.*, the information is not made generally available to the public.)

However, the statutory definition of "publicly post or display" prohibits a government agency both from (1) intentionally communicating publicly available content (which contains protected personal information) *and* (2) from otherwise making the publicly available content available to the general public. See Wis. Stat. §§ 757.07(1)(h) and (i) and 757.07(2)(a). The breadth of clause (2) suggests that a government agency may need to take steps to ensure that the recipient agency (or other third party) does not then publicly post or display the protected personal information.

In fact, the Act already contemplates this scenario and explicitly provides that a government agency may provide third parties with access to records containing protected personal information if the third party meets any of the following criteria:

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.

Wis. Stat. §757.07(2)(b)1.-3.

In most cases, the county will need to enter into a confidentiality agreement with the receiving party to ensure compliance with the Act. See Wis. Stat. 757.07(2)(b)3.

Note that the confidentiality agreement must be executed prior to the release of personal information. The length confidentiality agreements are in place may vary and are subject to negotiation among the parties.

Q7: 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?

A7: The 10-year period commences upon receipt of the written request. That is, the 10-year period will be specific to each individual requestor.

Q8: How will a county know if a judicial officer has died? Is the judicial officer's estate or immediate family required to notify the county?

A8: The Act does not require a judicial officer's estate or immediate family to notify the county of the judicial officer's death or provide for any other method of notification. This means monitoring and compliance will largely fall on counties.

Q9: What is considered "publicly available content?" Is it limited to content available on the internet?

A9: "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." Wis. Stat. § 757.07(1)(h).

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.).

Q10: What if a judicial officer sells his or her home and the home address was included in a written request?

A10: Such information would no longer be exempt under the Act. However, there is no requirement that the judicial officer update his or her written request, so the onus is on the county to remove the address from the protected personal information list. Likewise, the county would not have an automatic duty to add the new address of the judicial official unless the judicial official submitted a new written request.

Q11: What if a judicial officer owns multiple properties? What about properties owned by immediate family members?

A11: Only the addresses for properties affirmatively identified by a judicial officer in a written request must be shielded from disclosure. A judicial officer may identify his or her primary residence and any secondary residence, as well as the primary and/or secondary residence of any immediate family member.

Q12: What does "home address" mean? Does "home address" include anything more than just the property's address?

A12: "Home address" is defined by the Act 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." Wis. Stat. § 757.07(1)(c). 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. See also Q26/A26.

Q13: What about properties a judicial officer or family member has in ownership other than by their name (*e.g.*, trust)? What if a property is held jointly with another party?

A13: As described in A12, a "home address" means "a judicial officer's permanent residence and any secondary residence affirmatively identified by the judicial officer." The manner

of ownership is not relevant. This includes properties held in trust or jointly with another party. Likewise, a judicial officer does not even need to own a property for it to qualify as a home address. The key is that the property is the Judicial Officer's permanent residence or secondary residence. For example, a rented home or apartment could be considered a "home address" even though the property is not owned by the judicial officer.

Q14: 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.)?

A14: The Act 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. To "publicly post or display" means to intentionally communicate or otherwise make available to the general public. Wis. Stat. § 757.07(1)(i). As discussed in Q26/A26 below, the Act generally does not distinguish between situations in which a Judicial Officer's name is associated with a home address and those in which it is not. In other words, a county is generally prohibited from publicly posting or displaying a Judicial Officer's home address whether the Judicial Officer's name is associated with the address or not.

This means, for example, that under a strict reading of the Act, a county is prohibited from publishing a redemption notice for tax delinquent property that is a Judicial Officer's home address (and that is subject to a written request).

Q15: Should counties assist judicial officers to locate documents maintained by the Register of Deeds which may be shielded pursuant to the Act?

A15: A county may choose to assist judicial officers locate documents maintained by the Register of Deeds which may be shielded pursuant to the Act, but there is no requirement that counties do so. Under the Act, it is the judicial officer's responsibility to identify the document number of any document to be shielded. Wis. Stat. § 59.43(1r).

Q16: New 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)?

A16: No, the Register of Deeds is only required to prohibit access to electronic images of documents identified in a written request. New Wis. Stat. § 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. *See also* ANALYSIS AND SUMMARY OF THE ACT, Section 4, above.

Q17: Who may enter into confidentiality agreements with third parties to provide access to personal information? May the Register of Deeds enter into such agreements?

A17: Any "government agency" may enter into a confidentiality agreement to provide access to personal information. The term "government agency" is broadly defined and includes the Register of Deeds and other county officers/departments. See Wis. Stat. § 757.07(1)(b).

Q18: Do a government agency's employees need to sign confidentiality agreements?

A18: 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 the Act.

Q19: What about the state, municipalities, or other government agencies? Are they required to sign confidentiality agreements in order to access personal information?

A19: Yes. Other government agencies still constitute third parties under the Act. A county would need to enter into a confidentiality agreement with the receiving party to ensure compliance with the Act. See also Q6/A6 above.

Q20: May a county enter into separate blanket confidentiality agreements with its contractors for services, or is a county required to renegotiate its existing service contracts?

A20: Yes, a county may enter into separate blanket confidentiality agreements if it chooses. Likewise, such provisions may be built into the service contracts themselves. However, best practice would be to use a form of blanket confidentiality agreement with every third party to ensure consistency and compliance with the Act.

Q21: Is a Register of Deeds a "data broker" as defined in the Act?

A21: No. A "data broker" only includes "commercial entities," and the Register of Deeds is not a commercial entity. See Wis. Stat.§757.07(1)(a).

Even if a Register of Deeds was considered a "commercial entity," the Register of Deeds does not collect personal information "in order to sell the information or provide 3rd-party access to the information." *Id*. Rather, the Register of Deeds collects such personal information for the purposes prescribed by law. Any sale of or third party access to the personal information is a byproduct of the legally authorized functions of the Register of Deeds.

Indeed, the term "data broker" specifically excludes:

> A commercial entity using information that is lawfully made available through federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.

Therefore, even if a Register of Deeds was considered a "commercial entity," it still would not be a "data broker" since the information has lawfully been made available to the Register of Deeds. Wis. Stat. § 757.07(1)(a)3.

Q22: 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?

A22: Yes, unless the purchasing entity has signed a confidentiality agreement prohibiting further disclosure. See Q17/A17.

Q23: What personal information of a judicial officer may be included in county tax and assessment roll data sold to third parties such as title companies, escrow servicing companies, and other for-profit companies each year?

A23: Only a judicial officer's personal information that is not subject to a written request. Any personal information subject to a judicial officer's written request (*e.g.*, a home address) must be redacted.

Q24: 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?

A24: It appears that a provider would be in compliance with the Act 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.

Q25: What if a judicial officer requests to have a document or record maintained by the Register of Deeds shielded and such document or record also includes personal information of third parties (*e.g.*, a recorded easement)? Can the third party be given access to the recorded document?

A25: 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.

Q26: 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?

A26: 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. The Act prevents government agencies from publicly posting or displaying publicly available content that includes a judicial officer's "personal information," upon receipt of a written request. Wis. Stat. § 757.07(2)(a). "Personal information" is defined in Wis. Stat. § 757.07(1)(g) and above in Section 3.b. and includes a "home address," among other things. 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. Merely publicly posting or displaying a home address subject to a written request (even without an associated name) is a violation of the Act.

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.

Q27: What are allowable search fields on a public facing land records website once the Act is effective?

A27: Importantly, a public land records website's available search fields are not regulated by the Act. Rather, the Act requires the provider of such a website to provide the option to judicial officer's from "the display and search functions of their names." Wis. Stat. § 757.07(4m)(b). This means that the technical safeguards added to the website would need to apply to all search fields capable of generating documents or information that displays a judicial officer's name.

Q28: With respect to the Frequently Asked Questions contained in this Memorandum, which portions of the Act need, or would otherwise benefit from, a legislative fix or clarification?

A28: Many portions of the Act may be considered vague, ambiguous, or otherwise conflict with other statutory duties and processes of government agencies and other parties. The following is a list of the material issues identified in this memorandum that would likely benefit from a legislative fix or clarification:

- Require written requests and release consents to be notarized to ensure the authenticity of written requests to avoid inadvertent disclosure. See Q/A 1-4.
- Provide an exemption under the Act for other statutorily required processes, procedures, and functions of government agencies (*e.g.*, information required to be shared with the State or federal agencies, publishing legal notices related to tax deeds, etc.). See Q/A 6, 14, and 19.
- Require Judicial Officers to notify government agencies when a home address subject to a written request no longer qualifies as the Judicial Officer's home address. See Q/A 10.
- Define the term "secondary address" to avoid ambiguity of what properties are permitted to be included in a written request.
- Require a Judicial Officer's estate to notify government agencies of the Judicial Officer's death or provide mechanism for link to vital records (*i.e.*, notification to county upon death certificate). See Q/A 8.
- Clarify that a government agency's direct communication containing protected personal information with a Judicial Officer is not a public display or posting of personal information. See Q/A 9.
- Clarify that Wis. Stat. § 59.43(1r) (providing the requirements of the Act applicable to the Register of Deeds office) supersedes the other requirements of the Act with respect to the Register of Deeds office. See Q/A 16.
- Clarify that Wis. Stat. § 757.07(4m) (providing the requirements of the Act applicable to providers of public facing land records websites) supersedes the other requirements of the Act with respect to providers of public facing land records websites. See Q/A 24, 26, and 27.
- Add process for interested third parties to obtain electronic versions of documents from the Register of Deed's office (*e.g.*, an adjoining property owner seeking a copy of an easement on a Judicial Officer's property). See Q/A 25.