

LEGAL MEMORANDUM

TO: Wisconsin Counties Association (WCA) and Interested Parties

FROM: Attolles Law, s.c.

RE: 2025 Wisconsin Act 25

DATE: September 25, 2025

2023 Wisconsin Act 235 (“Act 235”) was enacted in March 2024, and created certain privacy protections for judicial officers and their immediate family members in the State of Wisconsin. Importantly, Act 235 includes prohibitions on government agencies from publicly displaying or posting certain content related to judicial officers, and includes exemptions from the obligation to disclose certain records under the Wisconsin Public Records Law.¹ Additionally, the Register of Deeds is required to shield certain publicly available electronic records, and public land records websites must create an opt out process for judicial officers with respect to the display and search functions available on such websites. While Act 235 accomplished many important policy goals, it also created a difficult, and often times uncertain, regulatory framework for various county officials, employees, and other stakeholders.

As a result, the WCA and other stakeholders worked with the office of the Director of State Courts, the State Legislature, and the Governor to enact clarifying legislation to provide practical solutions to identified issues and uncertainties. The trailer legislation (2025 Wisconsin Act 25 (“Act 25” and, together with Act 235, the “Judicial Privacy Law”) was enacted by the State Legislature and signed into law by the Governor on August 8, 2025.

This memorandum provides an analysis and summary of the amendments to Act 235 as a result of the enactment of Act 25. A full analysis of Act 235 (as originally enacted) is provided in our memorandum dated September 9, 2024, which is attached hereto as Attachment 1.

ANALYSIS AND SUMMARY OF ACT 25

1. The Judicial Privacy Law Generally Supersedes Other Statutory Requirements

Act 25 adds a provision which provides that the Judicial Privacy Law supersedes any statutory requirement that a government agency² publicly post or display publicly available content.³ That said, there are some exceptions that permit government agencies to publish certain public notices notwithstanding the provisions of the Judicial Privacy Law (*see, e.g.*, Section 6 below).

¹ Wis. Stat. § 19.21, et. seq.

² “Government agency” includes any association, authority, board, department, commission, independent agency, institution, office, society, or other body corporate and politic in state or local government created or authorized to be created by the constitution or any law. Wis. Stat. § 757.07(1)(b).

³ Wis. Stat. § 757.07(5m).

2. Changes to Written Requests and the Scope of covered “Personal Information” Subject Thereto

Act 25 amended several provisions relating to the process for submitting written requests and the “personal information” subject to protection, including what information must be identified by a judicial officer to receive protection, and the definition of “home address” and “secondary residence.” Under Act 25, a “home address” means an address “directly associated with or displayed with a judicial officer’s name” (or the names of a judicial officer’s children or an immediate family member) and a “secondary residence” is defined as “a place that is not a person’s permanent residence, but where a person regularly lives for at least 14 days each year.” Wis. Stat. § 757.07(1).

a. Changes to Written Requests

Many government agencies expressed concerns about ensuring the legitimacy of written requests and consents to release information. In order to address this concern, Act 25 made two changes with respect to judicial officers making written requests and providing written consents to release protected personal information.

In addition to needing to be made on form prescribed by the Director of State Courts as prescribed by Act 235, every written request and written consent to release personal information must now also be notarized.⁴ Likewise, both such forms (*i.e.*, the blank forms provided by the Director of State Courts) must be maintained as confidential. Note that this is in addition to the requirement of Act 235 to keep the completed forms confidential.⁵

b. “Personal Information” Must be Identified with Reasonable Specificity

Government agencies also expressed concerns with identifying existing legacy records that may exist on their websites and/or archives (as opposed to “new” information or records that are created and made available to the public). In response, Act 25 requires that a judicial officer’s written request identify personal information to be kept confidential “with reasonable specificity.” For example, if a judicial officer knows that he or she filed an application for a zoning permit with a government agency five years ago, they are required to identify that application in their request.

This is not to say that government agencies are completely off the hook for existing records that are already publicly available, but Act 25 does impose an obligation on the part of the judicial officer to assist the government agency in identifying records that should be shielded.

c. Definition of “Home Address” and “Secondary Residence” Within the Scope

One of Act 235’s critical ambiguities was the scope of “personal information”⁶ to which a juridical officer’s written request for protection may apply. In particular, it was unclear whether

⁴ Wis. Stat. § 757.07(4)(d) and (e)3.

⁵ *Id.*

⁶ Wis. Stat. § 757.07(1)(g)1.

a government agency could display a judicial officer's home address subject to a written request even in situations where there was no link between the address and the judicial officer's name.

As originally enacted, Act 235 essentially prohibited a government agency from displaying a judicial officer's home address (subject to a written request) at all. Importantly, Act 235 did 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) could have been considered a violation of Act 235.

Act 25 resolved this issue by specifying that a home address only constitutes "personal information" when it is "...directly associated with or displayed with a judicial officer's name."⁷ This means that a judicial officer's home address, even when subject to a written request, may be publicly posted or displayed by a government agency when it is not identifiable with a judicial officer's name (*e.g.*, on a GIS website if no name is associated with the address, or in a list of home addresses with no owner names presented, etc.).

Further, as noted above, Act 25 created a new defined term for "secondary residence." Act 235 provided that a judicial officer's secondary residence was eligible to be included as a home address subject to protection. However, Act 235 did not define what a secondary residence was. To resolve the issue, Act 25 defines a "secondary residence as "a place that is not a person's permanent residence, but where a person regularly lives for at least 14 days each year."⁸ Moreover, a judicial officer may now only identify up to two secondary residences for protection as covered personal information.

Finally, Act 25 requires a judicial officer to provide a government agency notice within 90 days when a property subject to a written request no longer qualifies as a permanent or secondary address.⁹

3. Creation of "Designated Officer" for Government Agencies

Act 25 permits a government agency to appoint a "designated officer"¹⁰ to serve as the point of contact for administration of the Judicial Privacy Law. This includes the requirement that a judicial officer must submit a written request to a government agency's designated officer, allowing the designated officer to act as a written request clearinghouse for a government agency.¹¹ In designating a responsible official or employee, government agencies are now able to direct education and compliance efforts through one office or department without fear that requests for shielding will be presented at different times to different people at different locations throughout the government agency.

⁷ Wis. Stat. § 757.07(1)(g)1.a.

⁸ Wis. Stat. § 757.07(1)(im).

⁹ Wis. Stat. § 757.07(e)6.

¹⁰ "Designated officer" means an officer or employee of a government agency in a position designated in writing by the government agency to fulfill its duties under this section. In the absence of a written designation, designated officer means the highest ranking officer or employee for the government agency. Wis. Stat. § 757.07(1)(am).

¹¹ Wis. Stat. § 757.07(4)(b)1.a.

4. Register of Deeds Responsibilities Extend to Electronic Documents Only

Act 235 created Wis. Stat. § 59.43(1r), which provides that the register of deeds is required to shield certain documents subject to a judicial officer's written request. Such requirement only applies to electronic images of documents specifically identified by a judicial officer (*i.e.*, by document number). However, Act 235 did not clearly state that Wis. Stat. § 59.43(1r) superseded the general requirements of Wis. Stat. § 757.07 relating to publicly available content.

Importantly, Act 25 clarifies that Wis. Stat. § 59.43(1r) applies only to electronic recorded documents and that it supersedes any conflicting statute (namely, Wis. Stat. §§ 757.07 and 19.35 (Wisconsin Public Records Law)).

5. Public Facing Land Records Websites

Similar to the Register of Deeds and Wis. Stat. § 59.43(1r), Act 235 created a specific set of rules for “public facing land records websites.”¹² Act 25 also included updates and clarifications with respect to this section.

a. Public Display of Addresses Without a Judicial Officers Name is Expressly Permitted.

Providers of such public facing land records websites expressed concerns over strict compliance with Act 235 since, as noted in Section 2.c. above, no distinction was made for situations in which a publicly displayed address could not reasonably be used to identify a judicial officer. Moreover, many state and local government systems (including emergency services) rely on accurate GIS data and the public availability of addresses.

With the enactment of Act 25, the Judicial Privacy Law now specifies that “‘Personal information’ does not include addresses without owner or occupant names associated with the address on a public facing land records websites for address verification, including for utilities and emergency services.”¹³ Further, Act 25 provides that addresses may continue to be displayed, so long as the name is removed and the link between the name and address is severed and precludes a search and retrieval that displays name.¹⁴

b. Definition of a Public Facing Land Records Website

Act 25 also refined the definition of a public facing land records website to reflect that the term includes both public websites and public land records databases linked from such a website (*i.e.*, an underlying data source).¹⁵ Further, Act 25 explicitly excludes the register of deeds index from the definition (further clarifying that Wis. Stat. § 59.43(1r) stands alone).

¹² See Wis. Stat. § 757.07(4m).

¹³ Wis. Stat. § 757.07(1)(g)(2m).

¹⁴ Wis. Stat. § 757.07(4m)(c).

¹⁵ Wis. Stat. § 757.07(4m)(a).

c. Process to Opt Out From the Display and Search Functions of a Public Facing Land Records Website

Act 235 required public facing land records websites to create an “opt out” function for judicial officers with respect to the website’s display and search functions of their names and the names of their immediate family members.¹⁶ However, providers were concerned with the ability to implement such functions and the ability to ensure only judicial officers were utilizing the capability.

To resolve this issue, Act 25 provides that, in order to opt out from the display and search functions, a judicial officer must make such request via a written request (*i.e.*, the same as any other request for the protection of personal information under the Judicial Privacy Law). It is important to note that the requirements in Act 25 in this regard would be met through maintenance of a “global” opt out system for any person wishing to maintain anonymity. For example, the process utilized to opt out of Dane County’s land records system¹⁷ (where a person’s name is not displayed in association with a particular property) that existed prior to Act 25 complies with Act 25’s requirements.

6. Act 25 Creates Additional Exceptions to the Duty to Keep Personal Information Confidential

Act 25 also added additional exceptions to the general duty under the Judicial Privacy Law to keep personal information subject to a written request confidential, including the following:

- The provision of records containing covered personal information from one government agency to another; so long as the providing government agency provides the receiving government agency with all written requests applicable to such records and notice to the judicial officer of such transmission. Upon receipt thereof, the receiving government agency is considered to have received the written request.¹⁸

This exception was added to the Judicial Privacy Law because Act 235 was not clear on whether such transfers of records between government agencies were permissible without entering into a confidentiality agreement (which is itself an exception to the general rule of confidentiality). Due to the substantial need for various government agencies at the state and local level to share records for legitimate and, at times, mandatory governmental purposes, it would have been impractical for government agencies to carry out such functions if they were required to enter into such confidentiality agreements with every other government agency with which they are legally (or practically) required to conduct business.

¹⁶ See Wis. Stat. § 757.07(1)(d) for the definition of “immediate family member.”

¹⁷ accessdane.danecounty.gov

¹⁸ Wis. Stat. § 757.07(4)(e)2.d. This subsection of the statute exists independent of the subsection allowing a government agency to share shielded information with a third party pursuant to a confidentiality agreement. For this reason, a government agency must provide the notices required under Act 25 even if a confidentiality agreement between government agencies is in place.

- If the release of personal information is part of the publication of a notice, including a notice of an administrative hearing or appeal that is required by law.¹⁹ This exception was requested because, under Act 235, there was not an explicit provision providing an exception for other statutorily required functions, such as a county publishing required legal notices for a tax certificate.
- If the release of personal information is to a title insurance company, an authorized agent of a title insurance company, a professional land surveyor licensed in Wisconsin, or an attorney licensed to practice law in Wisconsin, provided that the record may not subsequently be made publicly available.²⁰ This exception is intended to allow real estate professionals to conduct necessary business with respect to real estate transactions.
- If the release of personal information is to adjacent land owners seeking land records, provided that the record may not be made publicly available.²¹
- If the release of personal information is a notice of sex offender registration or any associated notice relating to sex offender registration.²²

7. Modification of Penalties and Remedies.

Act 25 also modifies the provisions governing violations of the Judicial Privacy Law, which should better protect government agencies and their officials and employees, while still providing for penalties for those seeking to (or causing) harm to judicial officials.

First, Act 25 specifies that a writ of mandamus is the exclusive remedy for a judicial officer claiming violation of the Judicial Privacy Law.²³ A writ of mandamus is a court order compelling a government agency (or official) to perform a non-discretionary duty that the government agency is obligated to perform but has refused or failed to do so (*e.g.*, in this case, the duty not to disclose personal information subject to a written request).

If the judicial officer prevails, in addition to complying with the Judicial Privacy Law, the government agency responsible for the violation must pay the costs and reasonable attorney fees of the judicial officer. Significantly, this is a judicial officer's only remedy against a government agency for a violation of the Judicial Privacy Law and there is no provision for an action against an official or employee individually (unless such person knowingly takes an action intending to create a threat or which actually causes harm to a judicial officer or his or her immediate family

¹⁹ Wis. Stat. § 757.07(4)(e)2.e.

²⁰ Wis. Stat. § 757.07(4)(e)2.f. Act 25 did not impose any requirement related to verifying a person or entity meeting the definitions of those qualified to receive shielded information. Nonetheless, it would be prudent for a government agency to maintain a record of representations made by third parties indicating such qualifications. Likewise, although not specifically required, it would be prudent to notify any recipient of shielded information of the obligation to hold the information in confidence.

²¹ Wis. Stat. § 757.07(4)(e)2.g.

²² Wis. Stat. § 757.07(4)(e)2.h.

²³ Wis. Stat. §§ 757.07(5)(a) and (b).

member).²⁴ From a practical perspective, this remedy mirrors the remedies available for violation of the Public Records Law.

Next, Act 25 expressly provides that any person who intentionally submits false information on a written request, or on a form to consent to the release of personal information otherwise protected by a written request, may be prosecuted under the current law crime of false swearing.²⁵

CONCLUSION

As detailed in this memorandum, Act 25 addresses and fixes many concerns that WCA and other interested stakeholders had with the practicality of implementing and administering Act 235. However, counties and other government agencies still face many challenges in successfully implementing the Judicial Privacy Law, which may necessitate additional legislation to provide further fine tuning of the law so that the policy goals can be effectively accomplished.

If you have any questions surrounding this memorandum, please do not hesitate to contact us. We appreciate the opportunity to be of service to WCA and its member counties.

²⁴ See Wis. Stat. § 757.07(5)(c).

²⁵ Wis. Stat. § 757.07(5)(d).