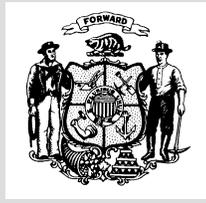


## STATE OF WISCONSIN

# Crime Victims Rights Board



Board Members:

Tim Gruenke  
Jen Dunn  
Rebecca Rapp  
Amy Severt  
Paul Susienka

## REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

### Respect for the Privacy Interests of Victims of Crime

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Wisconsin Statutes § 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 issues the following Report & Recommendation in response to a specific complaint it reviewed, which raised important issues and presented an opportunity to provide guidance about best practices for protecting victims’ privacy interests.

#### **Statement of Facts**

A victim of crime complained to the Board after a district attorney copied a local victim service organization on a letter to her about a case involving her as a victim. The letter outlined the district attorney’s decision not to prosecute the case. It contained details about the crimes committed against the complainant as well as other personal information. The complainant alleged that she had explicitly requested that information not be sent to the local agency. The district attorney stated he was not aware of that request and his intent in sending it to the organization was to inform advocates there should the victim seek services from them. The county victim witness coordinator was unaware of the letter when it was sent.

This incident occurred during the months leading up to a change in who would provide community-based advocacy services in the county. The district attorney was concerned that the transition might prevent the victim from connecting with an advocate. Despite his good intentions, upon reflection and after understanding that the complainant was distressed by the sharing of information, the district attorney told the Board he regretted his actions. He instituted a policy that his victim witness coordinator will see all communications that go to a victim.

#### **Involved Statutes**

**950.01 Legislative Intent:** ... This chapter does not prohibit a public official, employee, or agency from sharing information with victim service organizations that are eligible to receive grants under s. [49.165 \(2\)](#) or [165.93 \(2\)](#).

**950.04 (1v) (ag) Rights of victims.** Victims of crimes have the following rights:

(ag) 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.

(dr) 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.

### **CVRB Evidentiary Hearing**

The Board took testimony at an evidentiary hearing to more fully understand the relationship between the district attorney's office and the community organization to which the letter was copied. The Board also sought to ascertain whether the information was sent after the victim explicitly requested that it not be shared with that agency. On the first question, the testimony confirmed that the agency to which the letter was sent was a community-based advocacy organization to which the DA's office would be referring victims for certain (non-Chapter 950) victim support services. On the second question, testimony conflicted and there was not an independent record to establish by clear and convincing evidence that the district attorney knew or should have known that the victim did not want information shared with that agency.

### **Discussion**

All parties agreed that the sharing of information in this case had negative consequences for the victim but the question before the Board was whether the sharing violated the rights of the complainant. The guidance available to the Board on this matter begins with Wis. Stat. § 950.04 (1v) (ag) and (dr). Wis. Stat § 950.04 (1v) (ag) provides a duty to treat victims with respect for their privacy. Wis. Stat § 950.04 (1v) (dr) prohibits the sharing of personal identifiers for a purpose unrelated to a public official's duties. Also, of note is the legislative intent of Wis. Stat. Chapter 950 which provides that the chapter does not prohibit a public official, employee or agency from sharing information with specified domestic abuse or sexual assault victim service organizations. The legislative intent provides a framework for interpretation that the legislature envisioned circumstances in which victim information might be shared with some non-governmental victim service agencies.

The district attorney's actions were generally related to his duty to assist victims of crime who interact with his office. The district attorney believed the change in local victim service providers presented a specific risk at that time that the victim might be left without adequate support if he did not reach out to the local organization. In the Board's opinion, sharing victim information under

such a scenario is distinct from the kind of sharing Wis. Stat. § 950.04 (1v)(dr) prohibits. It is not the same, for example, as sharing victim information carelessly in course of gossip or in order to achieve a personal gain.

A public agency should not, however, feel entitled to send victim information to a victim service organization without considering and balancing the involved interests. In the present case, if the victim had met the burden to prove that the district attorney knew or should have known she did not want her information shared, the Board would have further examined whether the agency violated 950.04 (1v) (ag). Wis. Stat. § 950.04 (1v) (ag) imposes a ‘respect for privacy’ duty. When read together, provisions in Chapter 950 indicate that agencies should be very mindful about sharing the personal information of victims. They should consider how sharing practices hold up next to both Wis. Stat. § 940.04 (1v) (ag) and (dr).

The desire to connect victims with local service providers should not be misconstrued as a duty to proactively share victim information so that agencies can reach out to victims. One can imagine cases where a victim would benefit from that practice but one can just as easily imagine a situation where such a practice would not be in the victim’s best interest. *A public official will only know whether sharing information proactively is helpful or harmful by asking the victim.* A victim may have neighbors, acquaintances, friends, family or even victimizers with a connection to an agency to which the victim’s experience is disclosed. The victim—not a public agency or official—should be the one to decide who is informed about his or her victimization. Likewise, it is the victim—not a public agency or official—who has the best information to determine if it is safe for him or her to seek services locally. There are many potentially relevant considerations that would be unknown to a public official without the input of the victim.

As an alternative to getting a victim’s express permission for each instance of sharing, a public official could also adopt a practice—common in the financial services industry—of providing victims a notice of how and where their information will be shared with an option to opt out absent certain specified circumstances (such as a statutory duty or emergency that would necessitate sharing regardless of a victim’s consent).

Regardless of whether an agency adopts an opt-in or opt-out regime, an agency should take steps to ensure that any data shared is adequately safeguarded. This includes entering contracts or agreements with agencies with which information is shared in the normal course of business to ensure each agency adequately protects information (and does not, among other things, use it in ways that would constitute a violation).

The Board does not interpret the current statute as allowing the wholesale sharing of victim information anytime there is *some* connection to the duties of the agency. Neither does it interpret the statute as prohibiting *all* sharing of victim information. The Board solidly prefers that

agencies enact policies to protect victim information and practices that give victims the dignity of knowing when personal information will be shared with outside agencies. There may be exigent circumstances that warrant an exception from any such practice or policy. The prominent point from the Board's perspective is that such decisions are made after a determination and balancing of interests and duties within the particular facts of the case.

Achieving the correct balance, given the current statutory language, requires discernment and leadership from all agencies that interact with victims of crime. It is imperative to strike a balance that does not harm victims. The Board takes the lead from the victim in this case by saying officials should always consider the impact on victims when information is shared. The Board shares her hope that this case would lead to the implementation of policies that give victims' privacy interests proper consideration.

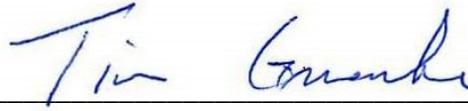
Lastly, the Board acknowledges that there are statutory provisions that might *require* a public official, employee or agency to share victim information at times. The preceding discussion and following recommendations are not an interpretation of any of those statutes.

### **Recommendations**

1. Leaders of public agencies should conduct a thorough and candid assessment regarding the handling of victim information. Without clear policies to guide the treatment of victim information, it is more likely that even well-meaning disclosure could cause harm to victims. It is incumbent upon leaders of public agencies to know and consider how victim information is treated by public employees.
2. All policies and practices related to sharing victim information should be considered within the context of how current technologies make the sharing of information easy, widespread and irreversible.
3. Jurisdictions should create a process to inform victims about when and with whom personal and sensitive information might potentially be shared so that victims can provide input to prevent or mitigate any harm that could result.
4. Jurisdictions should adopt an opt-in process (seek victim consent prior sharing victim information with a non-governmental party) or an opt-out process (providing victims with notice of how information might be shared overall with an opportunity to opt-out in particular circumstances).
5. Agencies should have contractual safeguards to ensure that third parties with whom the public agency shares information adequately safeguard the treatment of victim information.

6. Agencies should adopt a procedure for victims to raise privacy concerns or express preferences for sharing (or not sharing) their information.

Signed on this 23<sup>rd</sup> day of October 2019,

A handwritten signature in blue ink that reads "Tim Gruenke". The signature is written in a cursive style with a horizontal line underneath it.

Tim Gruenke, CVRB Chair