



**Understanding How the Open Records Law  
Affects Crime Victim Information Held by Criminal Justice Agencies**

*What Crime Victims Should Know*

---

Wisconsin Crime Victims Council  
February 2012

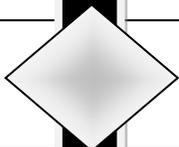
---

**Understanding How the Open Records Law  
Affects Crime Victim Information Held by Criminal Justice Agencies  
*What Crime Victims Should Know***

## **Table of Contents**

I. Introduction .....	1
II. Frequently Asked Questions.....	2
III. Overview of Records Held by Agencies .....	5
A. Community Service Providers.....	6
B. Law Enforcement Agencies .....	7
C. District Attorney’s Offices .....	8
IV. Conclusion and Recommendations .....	9

For questions about this document, contact:  
Julie Braun, Office of Crime Victim Services  
Wisconsin Department of Justice  
[braunja@doj.state.wi.us](mailto:braunja@doj.state.wi.us)



# Understanding How the Open Records Law Affects Crime Victim Information Held by Criminal Justice Agencies

## *What Crime Victims Should Know*

### I. Introduction

The exchange of information, even very personal information, is routine in our society but there are also expectations that some types of information will remain private. Contrary to popular belief, however, there are few laws that address how



specific crime victim information should be treated and no law that protects crime victim information under all circumstances. In fact, Wisconsin law favors open records and open meetings to promote transparency and accountability of government officials and agencies.<sup>1</sup>

It is not always clear to crime victims the level of privacy they should expect as their cases move through the criminal justice system. Crime victims can better advocate for their interests if they are informed about which records might contain their information, why those records might be requested and/or released and the protections that may exist to safeguard the use of their information at different stages of a case.

#### *About this Document*

*This publication was developed by the Wisconsin Crime Victims Council, a statutorily created body whose members are appointed by the Wisconsin Attorney General. More information about the Council is available online at: [www.doj.state.wi.us](http://www.doj.state.wi.us).*

*Nothing in this document should be construed to be legal advice. Victims of crime who have questions about how their personal information is documented, shared, stored or disclosed by an organization should ask questions about what, if anything, will be kept confidential at each step of the case.*

---

<sup>1</sup>The *Declaration of Policy* for Wisconsin's Open Records Law states: "In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Wis. Stat. § 19.31

**M**ost crime victims provide information to criminal justice agencies to pursue justice and hold offenders accountable. The reporting of crime and cooperation from victims is essential to maintaining public safety and the administration of justice. Agencies often need to share that information with each other. [The judicial system has its own set of processes by which information is shared, disclosed or protected. The treatment of records by the judicial branch of government is not addressed in this document.]



As a case moves forward, the status of a record can change. For example, a report or other document may be considered confidential at one point during a criminal case but not later in the case. Unless there is a law or court case requiring that a specific record be made public—or *prohibiting an agency from disclosing a specific record*—the decision is made by an agency’s records custodian on a case-by-case basis.

The following information describes the process by which that decision is made. This information may help guide crime victims to a better understanding of the issue so they can advocate effectively for their interests and work cooperatively with criminal justice officials.

## II. Frequently Asked Questions

*Who can get a record from a government agency?*

Anyone can contact a government agency and **request** a record. The person seeking the record (the “requester”) does not have to give a reason for wanting the record. The request must be answered by the **legal records custodian** of the government agency that holds the record.

*What is included in the definition of “record”?*

According to Wisconsin law [Wis. Stat. §19.32(2)], “record” means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. “Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.

*How does an agency decide whether to release a record upon request?*

If there aren't laws or court decisions that *prohibit* the release of the specific record and there aren't laws or court decisions that *require* the release of the specific record, the records custodian must conduct a fact-specific analysis called the **balancing test** to make the decision on a case-by-case basis.

He or she must consider multiple factors to determine whether allowing access to the record (releasing the record) would cause harm to a degree that outweighs the strong public interest of permitting public access to government records. If the records custodian decides not to release the requested record, he or she must provide a legal basis and specific reasons for the decision. If it is determined that a portion of a record should not be released but other parts can be released, the custodian will **redact** (remove or obscure) the parts of the record that should not be released.

*Which records are confidential by law?*

There are many provisions of law and case law that affect when government records are treated as confidential under various circumstances. Trying to list them here is beyond the scope of this document. The Department of Justice Open Records Compliance Guide (which can be found at [www.doj.state.wi.us](http://www.doj.state.wi.us)) provides additional details; however, questions about how a specific record will be treated should be directed to the agency/organization that holds the record in question.

*What should I do if I have concerns about my information?*

Use this document to help you determine which criminal justice agencies might have records of concern to you. Make direct contact with the organization or agency and speak with the "records custodian" or another agency representative to discuss your concerns.

*Doesn't the prosecutor represent me? Can't he or she help me address concerns I might have with other agencies about my records?*

The prosecutor represents the state, not the crime victim. There is no attorney-client privilege between a victim and the prosecutor that would protect your communications or records you provide. The prosecutor has an ethical and legal obligation to do what is best for the case. If you have concerns about your privacy, you should feel free to communicate those concerns so the prosecutor is aware but he or she cannot provide you with legal representation on this matter.

*I'm concerned about my privacy in general but not sure what to ask an agency about records. Any suggestions?*

The following questions might be issues you want more information about:

- Are there any records related to the case that have already been released?
- Is there a way to request that records be kept private and/or redacted?
- Is there a written policy about the treatment of crime victim information?
- Does the agency routinely give information about cases to media organizations? If so, what type of information is provided? Are names and addresses redacted?
- Does the agency let victims know before releasing records related to a case?
- Is a waiver form required (signed by the client) before the agency releases any case records?

## Concerned About Media Coverage?

Sometimes victims of crime do not wish to have contact with the media but find themselves thrust into the public eye. Other victims seek out the media, viewing media organizations as important allies. The Department of Justice Office of Crime Victim Services and the Wisconsin Crime Victims Council have developed resources with both scenarios in mind to give victims of crime practical advice related to interacting with the media.

Find *Tips for Interacting with the Media* at  
<https://www.doj.state.wi.us/ocvs/crime-victims-council>



## A. Community Service Providers

(For example, victim service and support organizations, therapists, private attorneys, medical providers, etc. Many of these providers are NOT government agencies but are included because crime victims are very likely to interact with community service providers.)

<p><b>Records that might contain victim information</b></p> <p>(This list is not all-inclusive)</p>	<ul style="list-style-type: none"> <li>✓ Intake forms</li> <li>✓ Client / case reports</li> <li>✓ Applications for service</li> <li>✓ Referrals to other providers</li> <li>✓ Patient records</li> </ul>
<p><b>Why records might be requested or released</b></p>	<ul style="list-style-type: none"> <li>✓ Request from the media (or member of the public)</li> <li>✓ For a related criminal or civil proceeding (i.e., by subpoena)</li> <li>✓ To assist another service provider working with the victim</li> <li>✓ To assist an insurance provider in processing a claim</li> <li>✓ To assist a government agency involved in the investigation or prosecution of the crime</li> </ul>
<p><b>Protections that <u>may</u> be available to minimize the loss of privacy.</b></p> <p>Note: crime victims should speak with the organization about whether these protections apply to a given record.</p>	<ul style="list-style-type: none"> <li>✓ Using an identifying number or pseudonym and an alternate address on forms instead of real name and primary address</li> <li>✓ There may be a requirement that a victim sign a waiver of confidentiality or be notified prior to any records release</li> <li>✓ Service providers (including certain victim advocates) may be able to assert statutory privilege of client communications to protect certain information<sup>2</sup></li> <li>✓ HIPPA regulations may apply<sup>3</sup> --ask the agency for details</li> <li>✓ It might be the policy of the agency to limit the sharing of client records</li> <li>✓ An agency might file legal motions to limit or challenge a subpoena</li> </ul>

<sup>2</sup> Wisconsin law provides, with exceptions, confidentiality for certain communications and information exchanged between a patient and some service providers. See *Wis. Stat. § 905.04 and Wis. Stat. § 905.045* for statutory language. See [http://www.wcasa.org/file\\_open.php?id=189](http://www.wcasa.org/file_open.php?id=189) for a fact sheet about advocate-victim privilege authored by the Wisconsin Coalition Against Sexual Assault.

<sup>3</sup> HIPPA (Health Insurance Portability and Protection Act) provides rules and protections concerning the release of medical information. For more information see U.S. Health & Human Services: <http://www.hhs.gov/ocr/privacy/>

## B. Law Enforcement Agencies

<p><b>Records that might contain victim information</b></p> <p>(This list is not all-inclusive)</p>	<ul style="list-style-type: none"> <li>✓ Arrest/police blotter<sup>4</sup></li> <li>✓ 9-1-1 audio recordings or transcript of 9-1-1 call</li> <li>✓ Police reports: investigative reports, interviews, referrals to the district attorney, case file, crime scene evidence/lab reports, etc.</li> <li>✓ Press releases and press statements</li> <li>✓ Statements provided by witnesses or the suspect (including recordings and written materials)</li> <li>✓ Documents obtained during the investigation (for example, social media site content, interviews with associates, crime scene recordings or photographs, phone and computer records, etc.)</li> <li>✓ Radio transmissions</li> <li>✓ Squad car computer communications</li> </ul>
<p><b>Why records might be requested or released</b></p>	<ul style="list-style-type: none"> <li>✓ Public records request from the media (or member of the public)</li> <li>✓ To assist another agency involved in the investigation or prosecution of the crime</li> <li>✓ To assist the city or municipal attorney in a related matter</li> <li>✓ If necessary to ensure the safety of children at a school</li> </ul>
<p><b>Protections that <u>may</u> be available to minimize the loss of privacy.</b></p>	<ul style="list-style-type: none"> <li>✓ There may be statutory authority to withhold the record</li> <li>✓ The balancing test may not favor the release of the record</li> <li>✓ The records custodian may determine portions of the record should be redacted</li> </ul> <p>Note: crime victims should speak with the agency about whether these protections apply to a given record.</p>

<sup>4</sup> A police blotter is a daily record of activities that can be inspected by the public. Media outlets frequently review and report details from the blotters.

## C. District Attorney's Offices

<p><b>Records that might contain victim information</b></p> <p>(This list is not all-inclusive)</p>	<ul style="list-style-type: none"> <li>✓ All records forwarded by the investigating law enforcement agency</li> <li>✓ Victims' rights forms, including Victim Impact Statement</li> <li>✓ Charging documents (criminal complaint, motion hearings, bonds)</li> <li>✓ Restitution claim documents</li> <li>✓ Court filings and court orders</li> <li>✓ Communications between the victim and the prosecutor (email, letters, etc.)</li> <li>✓ Exculpatory evidence<sup>5</sup></li> <li>✓ Records obtained by the district attorney's office during the investigation (crime scene evidence and/or lab reports, social media site contents, phone/ computer records, medical information, financial records, etc.)</li> </ul>
<p><b>Why records might be requested or released</b></p>	<ul style="list-style-type: none"> <li>✓ Public records request from the media (or member of the public)</li> <li>✓ Provided to the defense in compliance with discovery rules</li> <li>✓ Release required by statute (for example, to provide schools with information about pupil offenders)</li> <li>✓ Made public through court filings and CCAP electronic records<sup>6</sup></li> </ul>
<p><b>Protections that may be available to minimize the loss of privacy.</b></p> <p>Note: crime victims should speak with the prosecutor about whether these protections apply to a given record.</p>	<ul style="list-style-type: none"> <li>✓ There may be statutory authority to withhold records or the balancing test may not favor the release of records</li> <li>✓ Portions of the record may be redacted by the records custodian, if appropriate, to limit the disclosure of sensitive or identifying information</li> <li>✓ Use of pseudonyms, alternate address or identifying number rather than personally identifying/locating information on court filings/victims' rights forms</li> <li>✓ The prosecutor may request that the court seal a record or conduct an in camera review<sup>7</sup></li> <li>✓ The prosecutor may request a protective order from the court concerning what information can be entered into CCAP.</li> </ul>

<sup>5</sup> Exculpatory evidence includes evidence that tends to establish a criminal defendant's innocence.

<sup>6</sup> Wis. Stat. § 19.31 provides that circuit court records are open for public inspection unless closed by a statute, a common law limitation, or a specific court order. CCAP (Consolidated Court Automation Programs) displays certain, but not all, case information online. For more information, see <http://wcca.wicourts.gov/index.xsl>

<sup>7</sup> An "in camera review" allows a judge to review something in private to determine whether it will be admissible in open court.

## IV. Conclusion and Recommendations

Public disclosure of information about a crime victim can cause additional trauma to victims. **Decisions to disclose government records must be made in accordance with Wisconsin statutes and case law, including victims' rights provisions.** If a record that contains identifying information about a crime victim will be released the following actions may minimize the negative impact such disclosure might have:

- Redaction or the use of a numbering system or pseudonyms may be appropriate in many cases to reduce any harm of disclosure to the victim while allowing information of interest to the public to be disclosed. Records custodians seeking direction about Wisconsin's open records law and obligations may wish to read the *Wisconsin Department of Justice Open Records Compliance Guide* **which has a special section that addresses crime victim information.** The guide can be accessed at: [www.doj.state.wi.us](http://www.doj.state.wi.us).
- Whenever possible, agencies should notify victims prior to the release of identifying or sensitive information (especially if releasing to the media) so that victims can prepare themselves and their loved ones.
- Agencies that proactively/automatically provide certain crime information to media outlets should redact portions of records that identify a crime victim. Take care to assess whether certain details indirectly identify the victim. Even vague descriptions of victims and addresses can inadvertently identify victims.
- If it is possible to achieve the organization's goals without using the victim's name, use pseudonyms or a numbering system instead to protect victim privacy throughout the case.
- Provide victims in high profile cases with information about interacting with the media. Practical tips for managing media interest or engaging with media are available on the Crime Victim Council's webpage at: <https://www.doj.state.wi.us/ocvs/crime-victims-council>
- Consider victims' privacy interests within the framework of Wisconsin's statutory and constitutional victim rights.