

## CONFIDENTIALITY OF CIRCUIT COURT RECORD INFORMATION <sup>1</sup>

Wisconsin government records are generally open records. Wis. Stats. §19.31. The public may request to inspect all papers required to be kept by the clerk of circuit court and register in probate if the records are not confidential. §59.20(3). However, many court records are closed by state statute.

### Confidential by Statute

These statutes require that certain information found in court records be kept confidential.<sup>2</sup> These statutes may have provisions allowing disclosure to the parties, their attorneys, and others.

- Adoption records [§48.93(1d)]
- Child pornography as evidence [§971.23(11)(d)]
- Children's proceedings under ch. 48 [§48.396(2)]
- Confidential informants [§905.10(3)]
- Conditional release plan in NGI case [§51.30(7), *LaCrosse Tribune v. Stanley*, 2010AP3120]
- Divorce judgments when set aside after reconciliation [§767.35(6)]
- Divorce judgments when parties remarry each other [§767.35(7)]
- Family financial disclosure form & exchange of information [§767.127(3)(a); §767.54]
- Guardianship records [§54.75]
- Grand juror list and grand jury proceedings [§968.40-.46; §968.505-52]
- Insurance proceedings – judicial review [§645.24(3)] (may be open at insurer's request)
- Jane Doe proceedings [§48.375(7)(e)]
- Juror qualification forms and supplemental information [§756.04(9), (11)]
- Juvenile proceedings [§938.396(2)]
- Mental commitments [§51.30(3)]
- Parent denied periods of physical placement – limited access to child's records [§767.41(7)]
- Presentence investigation reports [§972.15(4)]
- Protective services and placement [§55.22]
- Restraining orders and injunctions, domestic abuse – petitioner's address [§813.12(5m)]
- Restraining orders and injunctions, harassment – petitioner's address [§813.125(5m), 814.60(1)(e)]
- Restraining orders and injunctions, display name on internet [18 USCS § 2265(d)(3),]
- Pupil records provided under subpoena for in camera inspection – [§118.125(2)(f)]
- Victim notification cards [§302.113(9g)(g)3., §302.114(6)(e), §973.09(3m) ]
- Wills deposited with the register in probate [§853.09(1), (2)] (during life of testator)
- Wiretaps, electronic or oral interceptions [§968.30(7)]

### Confidential by Court Order

These statutes provide that certain records may be made confidential if the court so orders. This is not an exclusive list; the court may order other records sealed in the interests of justice.

- Antitrust actions – confidential business or trade secrets [§133.13(2)] (may be sealed on motion)
- Restraining orders and injunctions, child abuse [§813.122(3)(b)3.]
- Family actions closed only "for good cause shown" [§767.13]

---

<sup>1</sup> List updated by Office of Court Operations on August 13, 2012.

<sup>2</sup> Many state statutes require other recordkeepers to keep certain information confidential; these statutes may be the basis of a motion to seal when the record is filed in court. For a list of these statutes see State Bar, *Wisconsin Public Records and Open Meetings Handbook*, app. D (2008).

- John Doe proceedings [§968.26] (may be kept secret in discretion of judge)
- Trade secrets litigation [§134.90(5)] (court shall protect trade secret by reasonable means)
- Restraining orders and injunctions, individual at risk [§813.125(3)(c)2.]
- Coroner's inquest [§§979.05(6), 979.08(7)] (open unless sealed by judge with concurrence of DA)

### **Confidential at Certain Stages**

Some records are confidential at certain stages of the case but are open at other stages.

- Criminal competency determinations are confidential prior to competency hearing. [§971.14(4)(a)]
- Criminal mental disease or defect reports are confidential until the physician or psychologist has testified or at completion of trial. [§971.16(3)]
- Medical incapacity of attorney petitions are closed until a finding of incapacity. [SCR 12.02(1)(e)]
- Paternity pre-adjudication records are closed; post-adjudication records are open. [§767.853]
- Search warrants are confidential until executed. [§968.21]

### **Not Kept in Court Files**

Some records are not kept by the court, but if found in court files should be considered confidential.

- Family medical history of noncustodial parent should be forwarded to the physician. [§767.41(7m)]
- Judge's notes are kept in the judge's personal files and not the case file. [§19.32(2); *State v. Panknin*, 217 Wis. 2d 200 (Ct. App. 1998)]
- Reports of sexual exploitation by therapists are not intended for filing with the court. [§940.22(4)(a)]
- Vital records [§69.20-24; 78 Op. Att'y Gen. 232 (1989)] It is DHFS policy that birth certificates not be kept or copied by the court; to prevent identity theft, they should be inspected and returned after a note is made in the file. Certified death certificates do not present a problem. For vital records related to sex change operations, the court record may be sealed as needed or the record not kept. [§69.15(6); *Madison v. Madison Human Services Comm.*, 122 Wis.2d 488 (Ct.App. 1984)]

### **Commonly Misunderstood**

Although the following types of records are often perceived as confidential, the clerk should maintain them as a public record unless otherwise ordered by the court.

- Child parties are only confidential as part of the general confidentiality rules associated with Chapters 48 and 938; they are not confidential in other matters.
- Health care records are generally not confidential once filed with the court. Unless there is a specific statutory exception, the parties must move to seal medical records. [§146.82; Informational Bulletin 3-24; see §908.02(6m)]
- Minor settlements are not confidential. [§807.10]
- Crime victims must be treated with fairness, dignity and respect for their privacy by public officials. Victims and witnesses should not have their personal identifiers used for a purpose unrelated to official government business. [§950.04(1r), (2w)] These provisions do not prohibit clerks from providing records containing this information to the public, following the "additional text guidelines" below.

### **Additional information on court website**

Under CCAP policy, some information should not be entered into fields that display on the Wisconsin Circuit Court Access website. See "Guidelines for entry of additional text on CCAP" for guidance on entry of personally identifiable information (social security numbers, bank account and credit card numbers, security codes, passwords) and names and address of victims, witnesses, and jurors.