



# FREQUENTLY ASKED QUESTIONS ABOUT PROTECTING INFORMATION IN COURT RECORDS

Starting on July 1, 2016, three new rules apply to documents filed in the Wisconsin circuit court. You can find these rules on the legislature's website at <http://docs.legis.wisconsin.gov/statutes>.

- **Wis. Stat. § 801.19** protects five specific numbers found in court records: social security, employer and tax identification, financial accounts, driver license, and passport numbers.
- **Wis. Stat. § 801.20** requires parties to identify confidential information when it is filed. The Director of State Courts has created a list of commonly-filed documents and case types that the clerk of court will automatically treat as confidential without a motion.
- **Wis. Stat. § 801.21** provides a procedure for motions to seal. A party seeking to protect information not covered above must move to seal or redact it and must specify the authority for restricting public access.

## GENERAL INFORMATION FOR ALL THREE RULES

### What is the purpose of these rules?

The new rules are intended to reduce the opportunity for identity theft, enhance personal privacy, and provide greater clarity on protecting sensitive information. They put responsibility on attorneys and self-represented parties to identify confidential information at the time of filing. The clerk of circuit court and register in probate are not required to review filings to find protected and confidential information.

### Which court records are covered by the rules?

The new rules apply to all documents filed with the circuit courts after July 1, 2016, including new documents filed in existing cases. The rules apply to all filings in circuit court cases, even in confidential matters like juvenile and guardianship proceedings.

Courts are not required to review their old records. If parties want to remove social security numbers and other protected information from old records, they may move to do so. There are also provisions for removing the information from new and old transcripts. (See p. 3 for additional information.)

### What's the definition of "redact", "seal", and "confidential"?

- "Redact" means to obscure individual items of information within an otherwise publicly accessible document.
- "Seal" means to order that a portion of a document or an entire document not be accessible to the public.
- "Confidential" means the court will automatically restrict a document or case type from being publicly accessible because it is protected by statutes, court rules, or case law.



## PROTECTING FIVE SPECIFIC NUMBERS

### What is protected information?

Wisconsin Statute § 801.19 defines five specific numbers as “protected information”:

- Social security numbers
- Employer and tax ID numbers
- Financial account numbers (such as banks and credit cards)
- Driver license numbers
- Passport numbers

### What if I want to protect a number that isn’t one of these five numbers?

The rule is limited to the five specific items of information. If you want to protect other identifying numbers, you need to file a motion to seal. (See p. 6 for additional information.)

### Do other courts have these rules?

The federal courts and at least 20 other state courts have similar rules that require redaction of social security numbers, financial account numbers, and other identifiers. The lists for each state vary.

### How do I handle redaction of the five specific numbers?

When preparing a document like a complaint or motion, you should omit these numbers or refer to them generically (for example, “plaintiff’s checking account”). If the number is necessary to the action, you must submit it to the court using form GF-241.

When submitting a previously existing document like an exhibit, you should redact the number by blanking it out on a copy, so the redacted version can be placed in the court file. If the number is necessary to the action, you should submit it on the GF-241 form or by attaching an unredacted copy to the form.

### What are some common documents that include the five numbers?

Common exhibits are credit card statements, bank statements, tax returns, W-2 forms, and copies of driver licenses. You should redact these numbers before any exhibits are submitted.

### Don’t I have to submit the original document to the court?

If you are submitting a document in support of a motion or brief, you should submit a copy. With the implementation of eFiling, the clerks of court do not keep original pieces of paper. Keep the original document in case there is some question about the authenticity of the document. If the court requires you to produce the original document, the clerk will keep the original.

### Do law enforcement officers need to omit the driver license number from citations?

For electronic citations, the court case management software will mask the driver license number from public viewing, so law enforcement should continue to include the number on electronic citations. For paper citations, law enforcement should omit the driver license number and submit it on the confidential form GF-241.

### Can the court share these five numbers with other agencies?

Yes, access to other persons and agencies is still allowed as provided by law. Also, the parties may stipulate in writing to allow access to protected information to any person.

### What’s the best way to redact a paper copy?

First, make a copy of the document and set the original aside. Keep it until the case is completely over. Make redactions on the copy by whiting or blacking out information. Then make a copy of the copy and submit that to the court.

### What’s the best way to redact an electronic copy?

If you are redacting a scanned or converted PDF, certain applications, like Adobe Acrobat Professional, and Foxit PhantomPDF include tools and offer plug-ins specifically for redaction. If redacting a Microsoft Word document, the best practice is to omit protected information during file creation. When redacting an existing Word document, remove or replace the protected information and then paste the redacted contents into a text editor like Notepad. Programs like Notepad will allow you to save a version of the document free of deleted information that is hidden in the code of Word documents.

## How do I remove these five numbers from an older case file?

If you wish to redact the five numbers from old court records, you must file a motion and identify all places in the court record where the number appears. Use form GF-242. The clerk of court will perform the actual redaction using special software. It is then your responsibility to check the court record to make sure everything was redacted.

## How do I get the five numbers redacted from a transcript?

If you wish to redact the five numbers from a transcript, you must file a motion and identify all places in the records where the number appears. Use form GF-243. The court reporter will perform the actual redaction and eFile the complete redacted version of the transcript with the circuit court. Notice of the filing of the redacted transcript will

## What are the clerk of circuit court and register in probate responsible for?

There are some commonly-filed forms that court staff will recognize and will treat as confidential. You do not need to submit form GF-244 for:

- Confidential address information in TRO and injunction actions (form CV-502)
- Confidential disclosure of protected information (form GF-241)
- Cover sheet for confidential records (GF-244)
- Confidential disclosure of information to be sealed or redacted (GF-245)
- Confidential petition addendum (form GF-179)
- Court report in cases under the Children's Code (Ch. 48) and the Juvenile Justice Code (see Wis. Stats. §§ 48.396(3)(b)2., 48.33, 48.293(2), 48.38(5)(d) & (5m)(d), 938.396(2m)(b)2., 938.33, 938.293(2), and 938.38(5)(d) & (5m)(d))
- Disclosure of sealed identifying information in a child custody proceeding (form GF-178)
- Examining physician's or psychologist's report in Guardianship cases and cases under the Children's Code and Juvenile Justice Code (see Wis. Stats. §§ 51.30(4)(b), 54.36, 48.396(3)(b)2., 48.295, 938.396(2m)(b)2., and 938.295)
- Family medical history questionnaire (form FA-608)
- Family financial disclosure (form FA-4139V)
- Income and expense statement (FA-4138V)
- Permanency Plans in cases under the Children's Code and Juvenile Justice Code (see Wis. Stats. §§ 48.396(3)(b)2., 48.38(5)(d) & (5m)(d), and 938.38(5)(d) & (5m)(d))
- Presentence investigation reports (see Wis. Stat. § 972.15(4m))
- Report of Examination under s. 51.45(13), Wisconsin Statutes, regarding Involuntary Commitment (form ME-940)
- Report of Examination under s. 51.20, Wisconsin Statutes, regarding Involuntary Commitment for Treatment (form ME-941)

Some statutes require an entire classification of cases to be kept confidential. These statutes have provisions allowing disclosure to the parties, their attorneys, and others. You do not need to submit form GF-244 for the following records:

- Adoption
- Child abuse restraining orders and injunctions
- Children's proceedings under ch. 48
- Confidential name change petition
- Grand juror list and grand jury proceedings
- Guardianship
- Jane Doe proceedings
- Mental health act proceedings
- Juvenile proceedings under ch. 938
- Paternity pre-adjudication records
- Protective services and placement
- Search warrants until executed
- Wills deposited for safekeeping during life of the person making the will



be accomplished via the eFiling system (for eFiling parties) or via traditional means. After receiving the redacted version or replacement pages, it is your responsibility to check the transcript and make sure that everything has been redacted.

### **What about court orders and opinions?**

Judges and court commissioners are also required to omit the five numbers when writing orders and opinions.

### **What if someone fails to comply with the redaction rule?**

If someone files a pleading with the numbers still visible, several things may happen. If you fail to protect

your own information, you have waived the protection offered by the rule and the document may simply remain in the file. The court, on its own motion, may seal the improperly filed documents and order you to file again.

If you fail to protect the information of another person, the court may impose reasonable expenses, including attorney fees and the costs of bringing a motion and preparing a new document. For serious violations, the court may sanction the violation as contempt. (See Wis. Stat. § 801.19 for more information.)

## **IDENTIFYING CONFIDENTIAL INFORMATION**

### **What is confidential information?**

Wis. Stat. § 801.20 provides a procedure for filing information and documents that are made confidential by statutes, court rules, or case law. Certain documents and proceedings must be brought to the attention of the clerk of court when they are filed. Use form GF-244.

### **What is the filing party responsible for?**

Certain confidential documents must be brought to the attention of the clerk when they are filed, using form GF-244. Be careful not to include confidential records as attachments or exhibits. They should be submitted separately by attaching them to the form.

- Child pornography as evidence
- Criminal competency determinations prior to competency hearing
- Criminal mental disease or defect reports prior to testimony or completion of trial
- Documents previously sealed by court order
- Family maintenance payment records
- Physical/mental health/sensitive personal matter in proceedings under Chapters 48 and 938, Wisconsin Statutes
- Pupil records provided under subpoena for in camera inspection
- Treatment records of individuals criminally committed under ch. 971 and 975
- Wiretap records, electronic or oral interceptions

You must also identify certain cases as confidential when they are filed:

- Insurance proceedings submitted for judicial review
- Medical incapacity of attorney petition
- Parent denied periods of physical placement
- Uniform Child Custody Jurisdiction Enforcement Act proceedings where risk of harm alleged



### **What if I don't see a record on this list?**

To protect other court records not listed on form GF-244, you must file a motion to seal. (See pg. 3 for additional information.)

### **Aren't health care records automatically confidential?**

Although medical and psychological records are confidential in many contexts, that confidentiality does not necessarily extend to the records once they are submitted as part of a court proceeding. The clerk of court will not automatically treat health care records as confidential because of Wis. Stat. § 146.82 or HIPAA. If you wish to protect a medical record, you must identify a statutory exception on form GF-244 or move to seal the records.

### **How does the circuit court handle information about crime victims and witnesses?**

Wisconsin law provides that crime victims and witnesses must be treated with fairness, dignity and respect for their privacy by public officials. Wis. Stat. § 950.04. There are some specific statutory protections:

- Crime victims and witnesses should not have their personal identifiers used for a purpose unrelated to official government business.
- Crime victims may not be identified by name in briefs and opinions in the Wisconsin Court of Appeals and Supreme Court.
- Crime victim notification cards are kept confidential by the clerk.
- The clerk generally will not enter the names of

crime victim and citizen witnesses in fields that display on the court website.

However, a crime victim's name, address and other information are not handled as confidential in circuit court unless there is a specific order by the court. To protect such information, a crime victim or witness must file a motion to seal with the court, using form GF-246. The district attorney's office and victim-witness coordinator may be able to help.

The Office of Crime Victim Services of the Wisconsin Department of Justice offers resources for crime victims, to explain the rights of victims in the criminal justice system and assist in exercising them. Their website also offers links to local services in each county. More information can be found at: <https://www.doj.state.wi.us/ocvs/office-crime-victim-services>.

### **When is information confidential in domestic abuse cases?**

In cases of domestic and other abuse, victims may file petitions for temporary restraining orders and injunctions against those who abuse them. These cases have some specific confidentiality protections that are automatically applied by the clerk of court:

- The petitioner's address is confidential in domestic abuse, child abuse, individual at risk (elderly and disabled persons), and harassment cases.
- The petitioner's name may not be displayed on the internet in domestic abuse cases and in harassment cases where domestic abuse conduct is alleged.

- A child support agency may request protection for the names and addresses of parties receiving child support where domestic abuse has been demonstrated.
- A name change petition may be sealed if the court finds danger to the petitioner.

If you need additional protection you must ask the court to seal the information, using form GF-246. Even if your address is kept confidential from the other party, it must still be filed with the court on the confidential address information form, CV-502. The address may be shared with law enforcement agencies for serving papers, or with other governmental agencies.

There are services available to help victims of domestic abuse, child abuse, individuals at risk, and harassment. End Domestic Abuse Wisconsin is a coalition of groups working with communities to prevent and end domestic abuse. Their website has links to numerous local and tribal programs: <http://www.endabusewi.org/>.

### **Why is my child’s name showing up in the public court record?**

The names of children involved in court cases are specifically protected in four situations:

- Wis. Stat. Chapter 48 generally provides confidentiality for cases involving child abuse and neglect, termination of parental rights, adoption and guardianship, foster care, unborn children and expectant mothers. This confidentiality applies when the child involved is age 17 or under. There are a number of statutory exceptions.
- Wis. Stat. Chapter 938 generally provides confidentiality for cases involving juvenile delinquency, juveniles in need of protection and services, truancy, and ordinance violations. This confidentiality applies to juveniles age 16 and under. For traffic violations, it applies to juveniles age 15 and under. There are a number of statutory exceptions.
- Wis. Stat. § 813.122(3) provides confidentiality for temporary restraining orders and injunctions in child abuse cases.

In other matters, the names of children are not confidential without a specific motion and court order. If you think a child’s name should not be in

the public court record, you may file a motion to seal using form GF-246.

### **Why isn’t the QDRO confidential?**

The financial disclosure form and exchange of financial information are confidential in family cases, so parties sometimes assume that a qualified domestic relations order will be confidential as well. These orders often contain social security numbers and account numbers. If you are filing a QDRO with the court, you should redact the numbers and place them on form GF-241, or submit both a redacted and unredacted version.

### **Is my driver license number confidential?**

The federal Driver’s Privacy Protection Act (DPPA) restricts the use of personal information obtained from a state department of motor vehicles for any purpose not allowed by law.

Driver license numbers must be redacted from documents filed on or after July 1, 2016. For information that comes to the court on electronic citations, the court CCAP software will mask the driver license number from public view. Driver license information will still be shared with other agencies as allowed by law.



## Are there records that are not kept in the court file?

A few records related to court cases are not kept in the court file:

- The family medical history of a noncustodial parent will be forwarded to the child’s physician.
- Judge’s notes are not part of the court record and are kept separately.
- Reports of sexual exploitation by therapists should not be filed with the court.
- Vital records (certificates of birth, death, marriage and divorce) are not kept in public court files. Where the information is needed, the records are inspected and returned after a note is made in the file. Court proceedings that result in new birth certificates are sealed.

## SEALING COURT RECORDS

### How do I seal a court record?

Wis. Stat. § 801.21 provides procedures and forms for making a motion to seal or redact. If the court seals a record, it means that a portion of a document or an entire document will not be accessible to the public. The statute sets out the process for parties and the court to follow. It does not set the standards for the court to use in deciding the motion to seal; those are found in Wisconsin case law.

### When is a motion to seal necessary?

Wisconsin public policy favors public access to government records. Wis. Stat. § 59.20(3) provides



specific authority for inspection of papers required to be kept by the clerk of courts and register in probate. Court records are generally open to the public unless protected by a statute.

Some court records are protected by Wis. Stat. § 801.19 (such as social security and driver license numbers) and Wis. Stat. § 801.20 (listing the court records made confidential by statute; see above). For all other records, if you wish to keep information private, you must file a motion to seal. The motion may extend to an item of information like a name or address, a document like a medical report, or, in rare instances, the whole case.

### What procedures do I follow to file a motion to seal?

You may ask the court to redact (omit or blank out) certain pieces of information from all records in the case. Alternatively, you may ask the court to seal a whole document or the whole case. Forms GF-245-247 are available for making a motion to seal the court record or the transcript.

The clerk cannot seal a record; this decision must be made by the court. The filing party must cite legal authority (such as statutes, court rules, or case law) and any necessary facts to explain why the information should not be publicly available. See Wis. Stat. § 801.21 for more information.

The CCAP software automatically places form GF-245 under temporary seal when submitted through eFiling. The filer should check the radio button labeled “seal” in order to seal the documents submitted with the GF-245. Until the court rules on the motion, the information can be viewed only by the filer. The motions to seal, GF-246A and GF-247A, and their orders, GF-246B and GF-247B, are open to the public.

### Are there any other statutes or case law that allow the court to seal?

Some statutes and case law provide that the court may seal certain records or seal the whole case:

- Antitrust actions—business or trade secrets [§ 133.13(2)]
- Confidential informants—identification and testimony [§ 905.10(3)]
- Coroner’s inquest [§ 979.05(6), § 979.08(7)]
- Divorce judgments when parties remarry

- each other or reconcile [§ 767.35(6), (7)]
- Family actions may be impounded for good cause shown [§ 767.13]
- In camera inspection of alleged victim’s psychological/ psychiatric/treatment records under *Shiffra/Green* [*State v. Green*, 2002 WI 68, 253 Wis. 2d 356]
- In camera inspection of potential discovery [Wis. Stat. § 971.23(6m)]
- In camera inspection of state employment records if the employee demands de novo review of the release (Woznicki notice) [§ 19.356]
- John Doe proceedings [§ 968.26(4)]
- Juror Information [*State v. Tucker*, 2003 WI 12, 259 Wis. 2d 484]
- Restraining orders and injunctions, individual at risk [§ 813.125(3)(c)2.]
- Trade secrets litigation [§ 134.90(5)]

### Can I ask the court to seal something just on the court website?

Sealing orders apply to the information no matter what format it is in.

- Information on the Wisconsin Circuit Court Access website (WCCA) is sealed through the use of codes that keep information from appearing online or on the public access terminals located in the clerk’s office.
- Documents in eFiled cases are available only to parties and attorneys through the eFiling system. Case documents are **not** available to the public on the court website. In eFiled cases, clerks have settings available that allow parties to access sealed documents only as provided by the court order.

### What will happen if the court seals information?

If the court decides that sealing or redacting is required, the court should seal or redact the least amount of information that will achieve the purpose. The public record will indicate that an order was issued and the name of the court official entering the order, for example, “Plaintiff’s medical record sealed by order of Judge Jones”. The sealing order will indicate who can see the information. Information may still be shared with other agencies as allowed by law.

### Where can I go to learn more about the laws that affect sealing?

Many state statutes require other custodians to keep certain information confidential, and these may be used to support a motion to seal. For a list of these statutes see State Bar of Wisconsin, *Wisconsin Public Records and Open Meetings Handbook*. For information about the state public records law and the cases that interpret it, see Wisconsin Department of Justice, *Wisconsin Public Records Law Compliance Guide*, found on the DOJ website at <https://www.doj.state.wi.us/>.

For information about protecting health care records, crime victim information, domestic abuse cases, qualified domestic relations orders, children’s names, and driver records. (See pp. 4–6 for more information.)

## FORMS AND OTHER INFORMATION

Forms relating to the new rules will be finalized in early June 2016. Court forms are developed by the court Records Management Committee and are posted on the court website at <http://www.wicourts.gov/forms1/circuit/index.htm>.

### What forms are available for redaction, confidentiality and sealing?

- Confidential Disclosure of Protected Information (GF-241)
- Motion to Redact Protected Information in Court Record (GF-242A)
- Order to Redact Protected Information in Court Record (GF-242B)
- Motion to Redact Protected Information in Transcript (GF-243A)
- Order to Redact Protected Information in Court Record (GF-243B)
- Cover Sheet for Confidential Records (GF-244)
- Disclosure of Information to be Sealed or Redacted (GF-245)
- Motion to Seal or Redact a Court Record (GF-246A)
- Order to Seal or Redact a Court Record (GF-246B)
- Motion to Seal or Redact a Transcript (GF-247A)
- Order to Seal or Redact a Transcript (GF-247B)



## What other forms are available?

- Confidential Petition Addendum (GF-179) to provide the social security number in family cases
- Affidavit to Seal Identifying Information in a Child Custody Proceeding (GF-177)
- Disclosure of Sealed Identifying Information in a Child Custody Proceeding (GF-178)
- Petition Concerning Removal of Address Information from Online Records (GF-183)
- Confidential Address Information (CV-502)
- Family Medical History Questionnaire (FA-608)
- Financial Disclosure Statement (FA-4139V)
- Income and Expense Statement (FA-4138V)
- Report of Examination under 51.45(13)—Involuntary Commitment (ME-940)
- Report of Examination under 51.20—Involuntary Commitment for Treatment (ME-941)
- Victim Notification Cards (CR-240)

## What information appears on the Wisconsin court website?

The Wisconsin Circuit Court Access (WCCA) website provides information about parties, court dates, filings and orders. Unlike the federal court website

(PACER), the Wisconsin court website does **not** display or sell documents from cases. To see documents and transcripts, you must go to the courthouse in the county where the action was filed.

By court policy, certain information should not be entered into fields that display on the Wisconsin Circuit Court Access website. The clerk of court will not enter information such as social security numbers, credit card numbers, security codes, and passwords. The clerk will also not enter the names and address of victims and citizen witnesses in criminal case types and temporary restraining order/injunction cases. Juror names or addresses are also not entered by the clerk. The clerk will not enter the full date of birth except for criminal defendants. The *Director of State Courts Policy on Disclosure of Public Information over the Internet* is posted at <http://wcca.wicourts.gov/index.xsl>. ■

Visit the court's website at <https://www.wicourts.gov/services/attorney/redact/> for additional information.

