



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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TO: The Honorable Members of the Assembly Committee on Criminal Justice

FR: Kevin St. John, Special Assistant Attorney General, Wisconsin Department of Justice

RE: 2009 Assembly Bill 340

Dear Representatives:

The Department of Justice has a special responsibility for interpreting and enforcing the Public Records Law. The Department also has a unique interest in ensuring the proper functioning of the criminal justice system. On behalf of the Department of Justice, I respectfully oppose Assembly Bill 340 because it frustrates the public's access to public records that record acts by public agencies involved in the justice system.

It is "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."¹ This policy is a recognition that "representative government is dependent on an informed electorate."² Records of court proceedings are not an exception to this policy. In fact, the public nature of criminal proceedings has long been recognized as an essential component of liberty.³

Assembly Bill 340 would severely limit the public records available on the Wisconsin Circuit Court Access Program. If enacted, the public would no longer be able to use the Internet to access critical information about significant events in the justice system. For example, the public would not be able to use the Internet to determine who their elected prosecutor is charging, or what charges are being brought. Importantly, the public could not use the Wisconsin Circuit Court Access Program to determine what cases their elected officials are bringing that are dismissed or result in a not guilty verdict. A crime victim could not consult the Wisconsin Circuit Court Access Program to determine when the next phase of a criminal case will occur. A consumer would not be able to use the Wisconsin Circuit Court Access Program to determine whether a company they wish to do business with is the subject of enforcement actions.

¹ Wis. Stat. § 19.31.

² *Id.*

³ U.S. Const. Amend VI (guaranteeing individuals public trials); Wis. Const. art. I, sec. 7 (same); *In re Oliver*, 333 U.S. 257, 266-72 (1948) (discussing history of and policy supporting public trials).

I concede that that some individuals might misuse information learned from the Wisconsin Circuit Court Access Program. Disclaimers will never fully prevent unlawful acts from occurring or premature conclusions from being reached any more than passing a law fully eliminates the activity it seeks to regulate. But the solution to this inevitability is not to restrict the free flow of information about important government activities. Absent compelling and particular reasons such as those that allow certain court proceedings to occur in closed proceedings or under seal, government should not paternalistically prevent or delay the dissemination truthful information about court actions simply because the information *might* be misused.

Ironically, while Assembly Bill 340 attempts to reflect a new privacy interest, it requires the government to monitor who is monitoring government activities reported in the Wisconsin Circuit Court Access Program. While the apparent purpose of this provision is to help identify potential instances of unlawful discrimination in employment, housing, or other public accommodations, the bill's scope would allow, for example, a criminal defendant to determine whether a crime victim is monitoring criminal proceedings.

What Wisconsin's courts have developed in the Wisconsin Circuit Court Access Program goes beyond the requirements of the public records law and, while not flawless, should be seen as a model of government transparency. To be sure, there might be discrete categories of court information that should properly be excluded from public dissemination over the Internet given the sometimes competing public interests in access, privacy, safety, and fairness. But the Department of Justice believes this measure goes much too far and frustrates the public's compelling interest in accessible government.

Respectfully, on behalf of the Department of Justice, I oppose Assembly Bill 340.