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DEPARTMENT OF JUSTICE

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Mr. A. John Voelker
Director of State Courts
16 East, State Capitol
Madison, WI 53702

Dear Mr. Voelker:

¶ 1. Your office has responsibility for the court information system. *See SCR* §§ 70.01 and 70.04. You have developed an electronic case management system called the Consolidated Court Automation Program ("CCAP"). You also have developed a web-based version of CCAP called the Wisconsin Circuit Court Access ("WCCA"). In cases involving a child in need of protective services ("CHIPS") or involving the termination of parental rights ("TPR"), WCCA restricts access to related case information.

QUESTION PRESENTED AND BRIEF ANSWER

¶ 2. You ask whether corporation counsel, representing the public interest in CHIPS cases and TPR cases, may have access to related case information in the restricted area of the WCCA website. In my opinion, corporation counsel may not have access to such information because WCCA, due to technical limitations, cannot prevent corporation counsel from accessing private case information.

BACKGROUND

¶ 3. While WCCA generally makes case history and related documents accessible to the public in most civil and criminal cases, access is restricted for most records in juvenile cases. The restricted access is organized by county and by type of case. WCCA is programmed to permit limited access (with password authorization) to a particular restricted class of cases, *e.g.*, juvenile cases. The problem, however, is that WCCA presently is not programmed to grant restricted access to a subset of cases within a class of cases. In other words, an individual who has access to CHIPS or TPR cases would have access to all of those cases, regardless of whether the individual was a party or an attorney involved in the cases.

¶ 4. Wisconsin Stat. § 48.396(2)(a) provides in relevant part:

> Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 [juvenile justice code] and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. **They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction** under this chapter and ch. 938 or as permitted under this section or s. 48.375(7)(e).

¶ 5. The statute includes specific exceptions that allow disclosure of juvenile records, on a case-by-case basis, to certain individuals such as the parents or guardians of the subject child, federal or state benefit agencies, the Department of Corrections for purposes of preparing pre-sentence investigations, or other courts, public officials, or private attorneys where needed. None of the statutory exceptions, however, permit continuing or regular access by anyone to all juvenile records or to all juvenile records of a particular nature.

¶ 6. The courts have confirmed that access to juvenile records under the subsections should be granted only on an "as needed" basis with case-by-case consideration. The leading case on the matter is the Wisconsin Supreme Court decision in *State ex rel. Herget v. Waukesha Co. Cir. Ct.*, 84 Wis. 2d 435, 267 N.W.2d 309 (1978). In that case, a minor sought to prevent the court from allowing access to his juvenile court record, for use in a civil action brought against him and his parents. The court held that maintaining confidentiality of juvenile records is the general rule and disclosure is the exception because the best interest of the child and of the administration of the juvenile justice system require protecting the confidentiality of juvenile records. *Id*. at 450-51. The court explained:

> Confidentiality is essential to the goal of rehabilitation, which is in turn the major purpose of the separate juvenile justice system. In theory, the role of the juvenile court is not to determine guilt or to assign fault, but to diagnose the cause of the child's problems and help resolve those problems. The juvenile court operates on a "family" rather than a "due process" model. Confidentiality is promised to encourage the juvenile, parents, social workers and others to furnish information which they might not otherwise disclose in an admittedly adversary or open proceeding. Confidentiality also reduces the stigma to the youth resulting from the misdeed, an arrest record and a juvenile court adjudication.
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> In view of the statutory expression of the strong public interest in promoting the best interests of the child and the administration of the juvenile justice system by protecting the confidentiality of the police, court, and social agency records relating to juveniles, we hold that the circuit court is justified in ordering the discovery of all or any part of sec. 48.26 records only when the court

> has reviewed the records *in camera* and has made a determination that the need for confidentiality is outweighed by the exigencies of the circumstances.

Herget, 84 Wis. 2d at 451-52 (citations and footnotes omitted).

¶ 7. The procedure established by *Herget* requiring *in camera* review and a case-by-case balancing test is codified in Wis. Stat. §§ 48.396(5) and 938.396(1j). If a court determines that disclosure of the juvenile record is warranted, "it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information." Wis. Stat. §§ 48.396(5)(d) and 938.396(1j)(d).

¶ 8. Shortly after the implementation of the WCCA, attorneys representing the interest of the public in juvenile courts cases sought access to WCCA restricted juvenile cases, in order to monitor their own cases or related cases. They argued that such access would create efficiencies and would make their work more effective. In late 2000, in response to a request from your predecessor, Assistant Attorney General ("AAG") Alan Lee concluded that only a statutory change would allow attorneys representing the interests of the public to have general access to WCCA juvenile records. In July 2002, AAG Mary Woolsey Schlaefer reached the same conclusion with respect to juvenile justice agencies. In May 2005, AAG Lee reached the opposite conclusion with respect to juvenile dispositional, intake or protective service workers, but only because those workers were part of the juvenile court system and had general authorization to access juvenile records.

¶ 9. In late 2005, following an inquiry from Dane County, you asked my predecessor whether juvenile records could be electronically shared with attorneys in the office of the Dane County Corporation Counsel who were handling juvenile cases. You cited a 2004 study by a CCAP Steering Committee that concluded that corporation counsel must be denied general access to CHIPS, TPR, and other juvenile cases because there was no method by which the WCCA could permit corporation counsel access only to their cases and not to cases that were privately filed and involved private attorneys. In March 2006, AAG Lee concurred in the conclusion of the steering committee.

ANALYSIS

¶ 10. You now renew the question whether corporation counsel are entitled to unrestricted access to WCCA juvenile case records either because they are counsel for most of the CHIPS cases, or because, in TPR cases, they are entitled to access by virtue of Wis. Stat. § 48.417(1) and (2). In my opinion, the answer is "no." This is because corporation counsel still will have access to juvenile records in privately-filed cases in which the public is not a party. Wisconsin Stat. § 48.417(1) and (2) recognize that corporation counsel may be required to join in some, **but not all**, privately filed TPR cases. Consistent with prior correspondence issued by Department of Justice Assistant Attorneys General, it is my opinion that the statutes and relevant court

decisions mandate the conclusion that corporation counsel may not have electronic access to CHIPS cases or to TPR cases unless and until WCCA is programmed in such a way as to limit access to privately filed cases in which corporation counsel are not involved. Permitting corporation counsel to access WCCA juvenile court files that they should not access would violate the statutory limitation that only information necessary to meet a specific need may be disclosed, on a case-by-case basis. *See* Wis. Stat. §§ 48.396(5)(d) and 938.396(1j)(d).

¶ 11. Wisconsin Stat. § 48.396(2)(g) does not compel a contrary conclusion. That statute initially was created by 1997 Wisconsin Act 205 to read:

> Upon request of **any other court** assigned to exercise jurisdiction under this chapter and ch. 938, **a district attorney or corporation counsel to review court records for the purpose of any proceeding in that other court,** the court shall open for inspection by any authorized representative of the requester **the records of the court relating to any child who has been the subject of a proceeding under this chapter.**

¶ 12. The Legislative Reference Bureau ("LRB") analysis of 1997 Assembly Bill 410, which was enacted as 1997 Wisconsin Act 205, stated in pertinent part:

> [U]nder current law, subject to certain exceptions, the records of the juvenile court may not be open to inspection and their contents may not be disclosed except by order of the juvenile court.
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> This bill requires a juvenile court to open for inspection the records of the juvenile . . . who has been the subject of a proceeding in the juvenile court as follows:
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> . . . .
>
> 2. Upon request of **any other juvenile court, a district attorney or corporation counsel** to review that juvenile court's records **for the purpose of any proceeding in the other juvenile court**.

¶ 13. As originally enacted, therefore, courts were required to give corporation counsel access to the records of the juvenile court relating to any child who had been the subject of a proceeding in that court under Wis. Stat. ch. 48, but only upon request and only for the purpose of a proceeding in **another** court.

¶ 14. In 2003, Wis. Stat. § 48.396(2)(g) was amended by 2003 Wisconsin Act 82 as follows:

> Upon request of any ~~other~~ court assigned to exercise jurisdiction under this chapter and ch. 938, any municipal court exercising jurisdiction under s. 938.17(2), or a district attorney ~~or,~~ corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that ~~other~~ court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(Strike-through and underlining in original).

¶ 15. The LRB analysis of 2003 Assembly Bill 62, which was enacted as 2003 Wisconsin Act 82, stated in pertinent part:

> This bill requires a municipal court to open its records of a juvenile for inspection by . . . any juvenile court, municipal court, district attorney, [or] corporation counsel . . . or attorney or guardian ad litem for a party **for purposes of proceedings in that juvenile court or municipal court** . . . . **The bill also requires a juvenile court to open its records of a juvenile for inspection by a municipal court, city, village, or town attorney . . . or guardian ad litem for a party for purposes of proceedings in that municipal court**.

¶ 16. Although the amendment deleted the word "other" from the phrase "other court" in the statute, the meaning did not change. Even under the amended statute, while corporation counsel must be given access to the records of the juvenile court relating to any child who had been the subject of a proceeding in that court under Wis. Stat. ch. 48, such access need be given only upon request and only for the purpose of a proceeding in **another** court. The statute does not require that a corporation counsel be given access to a juvenile court's records for purposes of a proceeding in that **same** juvenile court. Further, the statutory language providing for inspection of the juvenile court's records "relating to any child who has been the subject of a proceeding under [ch. 48]" is subject to a reasonable, limiting interpretation, in view of Wis. Stat. § 48.396(2)(a), to records relating to a child which are relevant to a specific proceeding in the other court.

CONCLUSION

¶ 17. In conclusion, consistent with the advice that my office has offered previously, it is my opinion that corporation counsel may not have access to juvenile cases through the WCCA until such time as the WCCA can be programmed to provide for access only to individual files where

access is permitted under Wis. Stat. § 48.396. Although allowing corporation counsel access to electronic CHIPS and TPR files likely would improve the effective and efficient performance of their duties, and while I have faith that corporation counsel could be trusted to limit their review of WCCA records only to cases in which they represent the public interest, the statutes cannot be interpreted to provide unlimited access to WCCA juvenile records where the general rule is confidentiality and where disclosure is the exception granted only after a fact-specific, case-by-case analysis. *See Herget*, 84 Wis. 2d at 450-51. I encourage you to pursue the appropriate programming changes in WCCA necessary to permit corporation counsel to access juvenile court records consistent with the statutory limitations.

Sincerely,

J.B. VAN HOLLEN
Attorney General

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