Wisconsin’s New Municipal Utility Customer Privacy Law:  
Frequently Asked Questions

Q-1. Have the rules pertaining to the privacy of municipal utility customer information (“Customer Information”) changed?

Yes. Previously, requests for Customer Information were subject to Wisconsin’s Open Records Law, and such information could not be withheld from disclosure in most circumstances. On July 7, 2013, the new Municipal Utility Customer Privacy Law, 2013 Wis. Act 25, went into effect. The new law provides that Customer Information is no longer subject to the Open Records Law and generally may not be disclosed without the customer’s consent.

On October 23, 2013, Governor Walker signed Senate Bill 315 into law (2013 Wisconsin Act 47). Act 47, which went into effect on October 25, 2013, fixed a technical issue related to municipal financing, and provided for additional exceptions related to disclosure of customer information without consent to those involved in real estate transactions, properties in foreclosure, and owners of real property. Please see exceptions 6 – 9 under Q-3.

On February 26, 2014, Governor Walker signed Assembly Bill 496 into law (2013 Wisconsin Act 134). Act 134, which went into effect on February 28, 2014, provided an additional exception related to disclosure of customer information without consent to a real estate broker or salesperson licensed under ch. 452 or an appraiser certified or licensed under ch. 458 in connection with a real estate transaction or appraisal or real property. Please see exception 10 under Q-3. In addition, Act 134 states clarifies that a municipal utility that sends a billing statement to a customer on a postcard does not violate Act 25, and also directs the Public Service Commission to create a standard customer consent form for use by all municipal utilities. The form will be available to municipal utilities by April 1, 2014.

Q-2. What does the new law prohibit?

The new law prohibits a municipal utility from releasing Customer Information to any person without the customer’s consent.

Q-3. Are there any exceptions to the new law?

Yes. Originally there were five exceptions. As noted above, additional exceptions were added to the law by Acts 47 and 134. Under the exceptions, a municipal utility may release Customer Information, without the customer’s consent, to:

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Exception 1: Agents, vendors, partners, or affiliates of the municipal utility that are engaged to perform any services or functions for or on behalf of the municipal utility.

This exception would encompass entities providing services to or on behalf of the utility, such as the utility’s power supplier, AMI vendors, third-party vendors for on-line bill payments, or another department within the municipality itself.

Exception 2: Transmission and distribution utilities and operators within whose geographic service territory the customer is located.

For example, if the municipal electric utility receives service from the American Transmission Company and the company requests the utility to provide it with Customer Information, the utility may disclose the information to the company.

Exception 3: The Public Service Commission of Wisconsin (“Commission” or “PSC”) or any person whom the commission authorizes by order or rule to receive the Customer Information.

For example, a municipal utility may be required to disclose Customer Information in its reports to the Commission. In that case, the municipal utility would file a public and a non-public version of the report with the Commission so that the information would not become generally available to the public. The public version of the report would black out the Customer Information.

Exception 4: An owner of a rental dwelling unit to whom the municipal utility provides notice of past-due charges pursuant to Section 66.0809(5) of the Wisconsin Statutes.

For those municipal utilities that have elected to put delinquent utility bills on the tax rolls, they may follow the process set out in Section 66.0809(5), which allows the municipal utility to release to landlords billing information pertaining to their tenants.

Exception 5: Any person who is otherwise authorized by law to receive the Customer Information.

For example, a municipal utility may release specific Customer Information to the police when served with a warrant or an administrative subpoena under the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Whether such information can be released without a warrant or subpoena to the local police (perhaps pursuant to Exception 1) is an open question. At the
very least, the municipal utility should consider requiring that the request for
information be made in writing (email may suffice) stating that the request
for Customer Information is pursuant to official police department business.
However, this practice may not comport with the law. The most conservative
approach is to not release the information without a warrant or subpoena.

**Exception 6:** In connection with an issue of municipal securities and to the
extent the municipal utility determines release is necessary to comply with
securities disclosure obligations, a lender or a purchaser, or potential
purchaser, of or investor, or potential investor in municipal securities.

A municipal utility may release specific customer information to financial
consultants or bond counsel in connection with new borrowings, refinancing
of existing borrowings, or to comply with annual continuing disclosure
requirements on existing debt.

**Exception 7:** In connection with the preparation of real estate closing
documents, a title agent, insurer, lender, mortgage broker, or attorney
providing legal services.

A municipal utility may release specific customer and account information to
title companies or other professionals involved in real estate closing
transactions.

**Exception 8:** In connection with the foreclosure of real property, a lender or
prospective purchaser.

A municipal utility may release specific customer information to banks or
individuals who request account information for properties in foreclosure
situations.

**Exception 9:** An owner of real property provided with municipal utility
service or the owner’s designated agent or representative.

A municipal utility may release specific customer information to landlords or
their designated agent (e.g., property manager) regarding their tenants’
account status.

**Exception 10:** In connection with a real estate transaction or appraisal of
real property, a real estate broker or salesperson licensed under ch. 452 or
an appraiser certified or licensed under ch. 458.

A municipal utility may release specific customer information to real estate
agents or appraisers as long as the work is related to a real estate transaction
or appraisal.
Q-4. How is a municipal utility defined?

For the purposes of the new law, a municipal utility includes a municipally owned water, electric, gas or telecommunications utility. It would also include a sewer utility where the municipality has adopted an ordinance combining its sewer and water utilities.

Q-5. How is Customer Information defined?

Customer Information is defined as “any information received from customers which serves to identify customers individually by usage or account status.”

Q-6. Can you clarify what this definition means?

Under the definition, all of the following information would be considered Customer Information: name, address, phone number, social security number, payment history, individual consumption or usage data, and billing information (including past due amounts associated with the account).

Q-7. Can a municipal electric utility release usage or billing information to a prospective residential customer?

Yes, but only in accordance with Wis. Admin. Code § PSC 113.0501(5), which provides that an electric utility must provide on request to current or prospective customers, tenants or property owners residential energy consumption information. This information shall include either the average consumption for the prior 12-month period or figures reflecting the highest and lowest consumption amounts for the previous 12 months.

If a municipal water utility is asked for such information, it would be wise to follow this PSC rule.

Q-8. Can our utility continue the practice of allowing customers to view their accounts and pay bills online?

Yes, as long as access to the Customer Information is restricted to the customer alone (e.g., a password protected account).

Q-9. How should a municipal utility respond to a phone call from a customer with questions about the customer’s account?

It is as important as ever for municipal electric utilities to have a policy under which the utility representative must document the contact with the caller and the manner in which the representative confirmed that the person
properly identified himself or herself as the customer. This documentation could be used to provide a defense if the utility receives a complaint that Customer Information was provided to someone other than the customer as a result of a false representation from the caller.

**Q-10. Can a municipal utility disclose Customer Information without the customer’s consent to a title company, bank or real estate broker when the customer’s premises is being sold or transferred?**

No. With regard to real estate transactions, municipal utilities often receive calls from the person/entity handling a real estate closing (often a title company) asking for the final utility meter reading. These can no longer be treated as requests under Wisconsin’s Open Records Law. Now, the utility has two options: (1) obtain the customer’s written consent to the release or (2) ask the person or entity handling the real estate closing to obtain the customer’s written consent for the utility to provide that information to the person/entity handling the real estate closing. See attached sample consent form.

Yes. Act 47 provides a specific exception that allows a municipal utility to disclose customer information when a property is being sold or transferred.

**Q-11. Would the law prohibit the use of postcard billing?**

Yes. Postcards should not be used for billing purposes or for notices that an account is past due. For municipal electric utilities, postcard billing was likely already prohibited under the Public Service Commission’s electric service rules, Wis. Admin. Code, ch. PSC 113.

Subsequent to the first issue of FAQs, the Public Service Commission of Wisconsin’s Chief Legal Counsel, Cynthia Smith, has indicated that the use of postcard billing does not violate Act 25. Please see the attached memo for additional information related to Ms. Smith’s opinion.

Act 134 explicitly states that a municipal utility may continue the use of postcard billing.

**Q-12. What, if any, penalties can be imposed on a municipality utility that violates the new customer privacy law?**

Wisconsin Stat. § 196.66 sets a forfeiture of no less than $25 nor more than $5,000 for a violation of any law enforced by the Commission. Any forfeiture action, however, would have to be brought by the Wisconsin Attorney General’s Office or the District Attorney for the County in which the utility is located.
Q-13. **Does the new customer privacy law impact a municipal utility's ability to use the tax roll for collections of delinquent utility bills?**

There is no impact on the tax roll process.

Q-14. **Do property managers get the same treatment as landlords?**

Yes. Act 47 specifically addresses the issue. A municipal utility may now disclose this information to landlords or their representative without consent of the customer.

Q-15. **Do we need customer consent to disclose customer information for Energy Assistance?**

No. Providing customer information to Energy Assistance would fall under exception 3 because disclosure is allowed by PSC rule (Wis. Admin. Code § 113.0505).

Q-16. **Can customer information be discussed during an open session meeting of the utility commission or municipal governing body?**

No. Customer information should only be discussed in a properly noticed closed session meeting. We recommend referencing Wisconsin Statute § 19.85(1)(f) on the closed session agenda notice.

Q-17. **We receive requests for new customer information from churches and other community organizations. Are we still able to provide this information or do we need customer consent?**

No. You can no longer disclose a customer's name or mailing address to churches or other community organizations (e.g., Welcome Wagon). Customer consent is required.

Q-18. **What are the best practices for identifying a customer over the phone?**

Ask the person for their full name, address and phone number. Adopt a practice of asking new customers for the last 4 digits of their social security number or have the new customer choose a unique PIN to be used for security purposes.

Q-19. **Can we provide our municipality with customer information (e.g., name, mailing address and email) so that they can send the customer helpful information (e.g., refuse and recycling programs)?**
Yes. Sharing customer information with other departments of the municipality would likely not be considered a “release” of information. The other department, however, cannot release the information to the public.

Q-20. Should we shred or recycle documents containing customer information?

We recommend that a municipal utility adopt the practice of shredding all documents that contain customer information.

ATTACHMENTS:

Act 25 text
Act 47 text
Act 134 text
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.137 of the statutes is created to read:

196.137 Municipal utility customer information.

(1) DEFINITIONS. In this section:

(a) “Customer information” means any information received from customers which serves to identify customers individually by usage or account status.

(b) “Municipal utility” has the meaning given in s. 196.377 (2) (a) 3.

(2) PROHIBITION. A municipal utility may not release customer information to any person except with the consent of the customer, or except to any of the following:

(a) Agents, vendors, partners, or affiliates of the municipal utility that are engaged to perform any services or functions for or on behalf of the municipal utility.

(b) Transmission and distribution utilities and operators within whose geographic service territory the customer is located.

(c) The commission or any person whom the commission authorizes by order or rule to receive the customer information.

(cm) An owner of a rental dwelling unit to whom the municipal utility provides notice of past−due charges pursuant to s. 66.0809 (5).

(d) Any person who is otherwise authorized by law to receive the customer information.

(3) PUBLIC RECORD EXCEPTION. Customer information is not subject to inspection or copying under s. 19.35.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”
2013 WISCONSIN ACT 47

AN ACT to create 196.137 (2) (ae), 196.137 (2) (am), 196.137 (2) (as) and 196.137 (2) (cr) of the statutes; relating to: exceptions to the prohibition of release of customer information by a municipal utility.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.137 (2) (ae) of the statutes is created to read:

196.137 (2) (ae) In connection with an issue of municipal securities and to the extent the municipal utility determines release is necessary to comply with securities disclosure obligations, a lender or a purchaser, or potential purchaser, of or investor, or potential investor, in municipal securities.

SECTION 2. 196.137 (2) (am) of the statutes is created to read:

196.137 (2) (am) In connection with the preparation of real estate closing documents, a title agent, insurer, lender, mortgage broker, or attorney providing legal services.

SECTION 3. 196.137 (2) (as) of the statutes is created to read:

196.137 (2) (as) In connection with the foreclosure of real property, a lender or prospective purchaser.

SECTION 4. 196.137 (2) (cr) of the statutes is created to read:

196.137 (2) (cr) An owner of real property provided with municipal utility service or the owner’s designated agent or representative.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”
AN ACT to amend 196.137 (2) (intro.); and to create 196.137 (2) (ap), 196.137 (4), 196.137 (5) and 227.01 (13) (zv) of the statutes; relating to: releases of customer information by municipal utilities.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.137 (2) (intro.) of the statutes, as created by 2013 Wisconsin Act 25, is amended to read:

196.137 (2) PROHIBITION. (intro.) A municipal utility may not release customer information to any person except with the consent of the customer obtained on a form specified under sub. (4), or except to any of the following:

SECTION 2. 196.137 (2) (ap) of the statutes is created to read:

196.137 (2) (ap) In connection with a real estate transaction or appraisal of real property, a real estate broker or salesperson licensed under ch. 452 or an appraiser certified or licensed under ch. 458.

SECTION 3. 196.137 (4) of the statutes is created to read:

196.137 (4) CONSENT FORM. No later than the first day of the 2nd month beginning after the effective date of this subsection .... [LRB inserts date], the commission shall specify a form for a municipal utility to obtain a customer’s consent to the release of customer information.

SECTION 3m. 196.137 (5) of the statutes is created to read:

196.137 (5) CUSTOMER POSTCARDS. A municipal utility that sends a billing statement to a customer on a postcard does not violate the prohibition under sub. (2).

SECTION 4. 227.01 (13) (zv) of the statutes is created to read:

227.01 (13) (zv) Specifies the form required under s. 196.137 (4).

SECTION 5. Initial applicability.

(1) The treatment of section 196.137 (2) (intro.) of the statutes first applies to consent obtained on the effective date of this subsection.

SECTION 6. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 196.137 (2) (intro.) of the statutes and SECTION 5 (1) of this act take effect on the first day of the 2nd month beginning after publication.