

By Carole Levitt

Regulating the Availability of Public Records Online

Federal and state courts are working to balance issues of privacy and public access

By definition, public records are available to anyone who takes the time to go to the appropriate source and ask for them. Privacy advocates are not pleased, however, that these records are becoming more increasingly accessible over the Internet. Without the effort of traveling to the source, anyone with a computer and Internet connection can access public records from home or from the workplace. With this ease of access, public records—including sensitive information—are now much more public.

Almost anything that a person files with a government agency—from a divorce decree to property records—is a public record. A careful search of public records can indicate the price paid for a house, the names of those being booked by the Los Angeles sheriff, the names of those who have been assigned to pay child support, and even the Social Security and credit card numbers of those who file for bankruptcy.

For those who argue that access to public records is part of our open, democratic tradition

and our free speech rights, nothing short of full access to public records via the Internet, sensitive information included, is acceptable. On the other hand, those in favor of the right to privacy want sensitive information taken off the Internet, especially in light of crimes such as identity theft and stalking.

A Standard Policy

As a result of this controversy, courts are drafting rules to address public access to court documents. For example, in an effort toward a consistent state policy for access to electronic court documents, the National Center for State Courts and the Justice Management Institute submitted a white paper, *The Public Access to Court Records: Guidelines for Policy Development by State Courts*, to the Conference of Chief Justices and the Conference of State Court Administrators at their Annual Conference this past summer (visit <http://www.courtaccess.org/modelpolicy/>). The document advocates electronic access

to court records but seeks to limit access to information that is not accessible to the public pursuant to federal or state law, court rule, or case law.

In California, Section 37(b)(12) of the Rules of Court simply states: "The public should have access to electronically filed documents as required by law." (See www.courtinfo.ca.gov/rules/2002/appendix/.) And the Judicial Council of the Califor-

nia Administrative Office explains that "should have access" means only "to the extent it is feasible," which includes consideration for counties that simply lack the funds to establish online databases (<http://www.courtinfo.ca.gov/rules/reports/documents/rules06.pdf>). Thus, online access has general support, but it has been limited by practical concerns as well as questions of privacy. Ultimately, for example, the council decided to limit the court data that is freely available to the public over the Internet.

Consequently, Rules 2070 through 2077 were added to the California Rules of Court, effective July 1, 2002 (see <http://www.courtinfo.ca.gov/rules/>). Privacy concerns are addressed in Rule 2073, which states that records from all the following types of proceedings are not to be accessible over the Internet by the public: juvenile court, guardianship or conservatorship, mental health, criminal, and any proceedings under the Family Code and Code of Civil Procedure Section 527.6 (civil harassment).

What can be accessed via the Internet is the register of actions (as defined in Government Code Section 69845), which includes the title of each cause, with the date of its commencement and a memorandum of every subsequent proceeding in the action with its date, calendars, and indexes and other records from civil cases, except those listed above. Court rules regarding the accessibility of information online do not affect public access to paper copies or to computer terminals at courthouses. These rules apply only to the public and

not to parties to an action or their attorneys. Additionally, these rules apply only to trial courts; appellate courts and the supreme court have fully searchable online dockets.

In the Los Angeles Superior Court, an important limitation on online access is that cases may only be searched by number. However, the Los Angeles County Bar Association has created a Searchable Superior Court Civil Register, which is accessible through its Web site (www.lacba.org). Users may search this register by a number of criteria, including the names of judges and parties, types of cases, and motions filed.

At the federal courts, the *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* was adopted in September 2001. It can be viewed online at www.privacy.uscourts.gov/Policy.htm. Of particular concern to federal courts was public access to bankruptcy filings, because of the large amount of sensitive information contained in these filings, including Social Security numbers, financial account numbers, detailed profiles of personal spending habits, and medical information. However, the administrative office of the U.S. courts recognized that in order for the public to hold the bankruptcy system accountable, access to records that show whether an individual has filed for bankruptcy, the type of proceeding, and the identities of the parties in interest should be available. A debtor's personal, identifying

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information and financial account numbers should not be included in electronic or hard copies of filings. In practice, this means that only the last four digits of Social Security and financial account numbers are to appear in public records, and the names of minor children are to be omitted. Unlike the wholesale ban on electronic access to some records that the California court system has imposed, the federal courts are leaning toward partial publication from case files.

Other Public Records

Other public records are publicly available and free over the Internet. The Los Angeles Sheriff's Inmate Information Center booking log is available, containing one year of historical data. Search by name and the following information will unfold: full name, gender, race, age, date of birth, weight, hair color, eye color, reason for arrest, bail amount, and housing location (http://pajis.lasd.org/ajis_search.cfm). To the fear of public knowledge of one's arrest, one may now add the fear of publication of one's weight and age at the time of arrest.

A list with pictures of deadbeat dads and moms is available at <http://childsupport.co.la.us/dlparents.htm>. This site announces to the world that Maximillian Rudolf Lobkowitz is delinquent and provides the following details: He owes more than \$500,000 in back child support, was born in 1943, weighs 220 pounds, and was last seen in Beverly Hills. Records of all marriages taking place in Las Vegas are freely searchable on the Web by name or certificate number (http://www.co.clark.nv.us/recorder/mar_srch.htm). Marriage records in Los Angeles, however, are not so freely accessible. In Orange County, copies of marriage certificates are not freely available on the Web, but they can be ordered over the Internet (click on Online Transactions at <http://www.oc.ca.gov/>).

Death records can be found in the Social Security Index at <http://rootsweb.com/> or <http://ancestry.com/>—both are free sites that require registration. Search by last name and you can learn date of birth, date of death, last known address, Social Security number, and place of issuance. The death records of 9,366,786 Californians (from 1940 to 1997) are also available at rootsweb. These records provide much of the same information that is found on the Social Security Index but not Social Security numbers. They do provide, however, an additional piece of information—the mother's maiden name—that answers one of the most common questions asked for security and privacy purposes. After September 11, the governor requested that the death and birth records found at rootsweb.com be taken down. That request was com-



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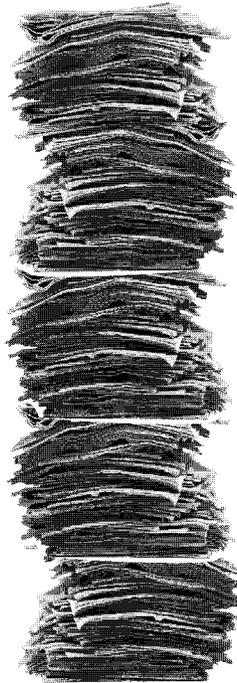
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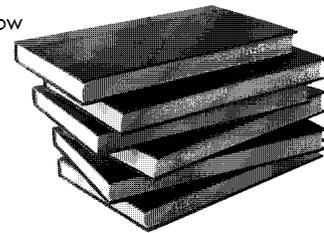
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plied with, but the death records have appeared again.

Sex offender registries have been one of the more litigated areas of free public records on the Web. Every state and county handles the matter differently (<http://www.fbi.gov/hq/cid/cac/states.htm>). In Los Angeles there is no Web database that is searchable by offender's name. Recently, however, a Web database was created to search by location, but it does not attach names or precise addresses (<http://gismap.co.la.ca.us/sols/default.htm>). This site is experiencing such heavy usage that users may have considerable access problems.

There is also no consistency among states and counties regarding access to real property records and the amount of information to be found on these records. In Los Angeles, free searching by an address or assessor number is possible, but searching by a person's name is not (<http://assessor.co.la.ca.us/>). Even after one conducts a search by address or assessor number at the county assessor's site, the property owner's name is still not shown. In sharp contrast, the free assessment database in Tennessee allows for name searching (<http://170.142.31.248/>). It is impossible to ascertain all of an individual's real property assets using free publicly accessible records, but one can search by name using a pay database such as Lexis, Westlaw, Choicepoint, or Accurint. If one owns California property but does not know it, the unclaimed property database for California can help. This site can be accessed via the controller's office site at <http://www.sco.ca.gov/>. (I have found unclaimed money for others but never myself.) A local attorney found \$60,000 when he searched under the name of a client who owed him money.

The Internet has undoubtedly tipped the balance in favor of the public's right to know over the person's right to privacy. Although courts have a duty to provide access, no statutory obligation exists for the dissemination of case files electronically. Internet access to public records is not mandated by the federal courts, and in California, it is mandated only to the extent feasible because some smaller counties simply do not have the funds to implement Web access. Web access to sensitive information, such as Social Security numbers, can be obtained from investigative databases. These databases are not available to the public but only to groups such as attorneys and law enforcement who can prove that they have a legitimate business purpose for the information. If some privacy advocates have their way, even this may not be an option. At the very least, everyone should be aware of just how public their public records can be. ■