

Privacy and Court Records: Online Access and the Loss of Practical Obscurity

Tracking sensitive information
in North Carolina Supreme Court briefs
submitted before electronic filing

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Our Focus

- **Court Records**

Available from courts, some libraries

Recent years in electronic filing systems
& retrospective digitization projects

- **Court Opinions**

Primary law

Traditionally widely published, print/online



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Court Transparency Long Protected in U.S.

- “The early history of open trials in part reflects the widespread acknowledgment...that public trials had significant community therapeutic value.... [T]he means used to achieve justice must have the support derived from public acceptance of both the process and its results.”
- Chief Justice Warren Burger, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570-71 (1980).



But Privacy is also Protected

- Generally as piecemeal exceptions
- Sometimes through general balancing of interests



Competing Values

Access

- **Accountability of the Courts**
- **Government Property is the People's Property**
- **History**
- **Social Goods through Data Mining**

Privacy

- **Chilling Effects on Use of the Courts**
- **Personal Information is the Individual's Property**
- **Dignitary Harm**
- **Financial Harm/ID Theft**



The Law of Court Records

Access

- 1st Amendment, 6th Amendment
- Common law
- Public records law
- Court rules
- Law of sealing records, pseudonymous litigants

Privacy

- Constitutional privacy
- Common law
- Public records law exemptions
- Court rules for redaction
- Law of sealing records, pseudonymous litigants



“Digital is Different”

- The law’s balance of access and privacy is only part of the reality
- Court files & library shelves are less accessible
- “Practical obscurity” lost through e-filing & digitization
- Digital industries present new privacy risks
- E-filing & digitization require rebalancing of the interests



Study Overview



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Research Questions

- How often does sensitive information appear in appellate court records created before e-filing?
- What is the context of this information?



The Project

- Digitized files of 504 N.C. Supreme Court briefs and appendices submitted in cases decided between 1984 to 2000
- Taxonomy of sensitive information
- Coders and a coding system
- Analysis of frequency, proximity, context of different types of sensitive information
- Analysis of logistics of isolating, managing sensitive information in court records



Creating a Taxonomy of Sensitive Information

- Surveyed federal and state law, some foreign law, and privacy scholarship
- Categorized information types
- Required full or last name to be associated with info type, except for SSN
- Coded for adult/minor



14 Sensitive Information Categories

Assets

Biometric

Civil Proceedings

Computer

Criminal

Education

Employment

Financial

Health

Identity

Images

Intellectual

Privacy

Location

Sex



139+ Sensitive Information Types

ASSETS

Financial Asset
Gun Permit
Gun Permit Application
Gun Possession or Ownership
Real Estate Ownership/Rental Information
Vehicle Identification Number
Vehicle License Plate Number

BIOMETRIC

Age
Barefoot Print
Date of Birth
Date of Death
Fingerprint
Gait
Iris Print
Racial or Ethnic Origin
Voice Print

CIVIL PROCEEDINGS

Adoption
Child Support
Civil Commitment
Custody or Guardianship
Dependency or Neglect
Divorce
Juror Name
Prior Civil Judgment

CRIMINAL (continued)

Sentence
Sexual Abuse Allegation
Witness Name

EDUCATION

Eligibility for National School Lunch Program
Financial Aid Award
Student Discipline
Student Grades or Other Performance Evaluations
Student ID

EMPLOYMENT

Discipline
Military Discharge
Performance Evaluation

FINANCIAL

Bank Account Number
Bankruptcy
Compensation
Credit Card Number
Credit Report
Debit Card Number
Foreclosure Judgment
Insurance Policy Number
Loan Account Number
Other Financial Account Number
Personal Identification (PIN) Code

HEALTH (continued)

Pregnancy
Prescriptions

IDENTITY

Driver's License Number
Email Address
Fax Number
Gender Identity Change
Mother's Maiden Name
Name of Minor Child
Passport Number
Place of Birth
Professional Certificate or License Number
Signature
SSN - Full
SSN - Partial
State ID Number
Telephone Number
Unique Physical Characteristic

IMAGES

Full-Face Photograph
Photos or Videos of People Fully Undressed
Photos or Videos of People Partially Undressed
Photos or Videos of Violence, Abuse or Death

Key Variables

Case Variables

- Case Type
- Subject Area(s)
- Year of Case Decision

Document Variables

- Document Type
- Appendix Present
- Length (in pages)



Key Variables

Information Variables

- Information Type (139 types)
- Information Category (14 categories)
- Subject of Information (Adult, Minor)
- Location of Information (Brief Body, Appendix)
- Page #
- Number of appearance on page



Preliminary Results



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Other Research Questions?



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