Chapter VII

Does 'Public Access' Imply 'Ubiquitous' or 'Immediate'?

Issues Surrounding Public Documents Online

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Abstract

In the information age, various entities (e.g., citizens or business concerns) are now able to access and gather large amounts of publicly available information online, which has obvious benefits. However, there are perhaps unfavorable consequences to this information gathering, and little attention has been paid to these. This chapter highlights the various

issues that are created by having unfettered access to documents online, as well as the ability of citizens and investigators to compile databases of personal information on individuals. We cite existing laws to support the position of having limits on the freedom of access, and we propose several strategies for consideration in balancing the rights of the public to access public information while yet protecting and celebrating individual privacy. While the majority of this paper deals with American laws and history, international examples are also noted. In the post-9/11 world, a great deal of reasonable concern has been raised by governmental information gathering. We suggest that equal attention should be paid to ubiquitous access to public records, even by individuals and non-government agencies, and potential concerns for individual privacy that this access might raise.

Introduction

New advanced information technologies (mainly the Internet and large-capacity databases) have enabled governmental agencies to make public documents more accessible and cheaper to store. Through various e-government initiatives, many agencies are now moving their public records access to an online format. This seems to make a great deal of fiscal sense; paper documents are difficult and costly to store and archive and rather labor-intensive to make available to the public. In electronic format, the documents are cheaper to store and access can be made near-universal (i.e., to anybody with access to the Internet). Further, since the documents are public records anyway, there should be no privacy concerns with posting them online.

However, as Mason's (1986) prescient essay indicates, with every piece of information that is made available, a tiny thread is created that can eventually grow to form a tangled web. Making information ubiquitously available, even that which is by purpose and design public information, can eventually have previously unforeseen implications. For example, in 1997, publicly available pending arrest warrants in Maryland were used by law firms to attract new clients. The attorneys searched the online database and informed suspects that there was a pending warrant for their arrest, in essence using that information as a marketing tool (Pan, 1997). Obviously such a practice would have potential to endanger police officers as they served the warrants. Other examples of potential misuse occur when state department of motor vehicle

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