

Statement before the Federal Trade Commission

The Information Marketplace: Merging and Exchanging Consumer Data Session 2: Consumer Data: What is it? Where does it come from? March 13, 2001

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I would like to thank the Federal Trade Commission and the organizers of this workshop for the opportunity to speak today about public records as a source of profiling information about individuals.

Public records maintained by federal, state and local governments disclose a vast array of details about an individual's life, activities and personal characteristics.

At the federal level, most personal information is not available to the public because of the privacy exemption in the Freedom of Information Act and because of the restrictions of the Privacy Act of 1974. However, bankruptcy records are maintained by the federal courts and are a source of detailed financial information. The Office of Management and Budget considered the issues raised by access to these records and released a study entitled "Financial Privacy in Bankruptcy: A Case Study on Privacy In Public and Judicial Records."

At the state and local level, however, the types of records that are maintained are different, and the laws and policies governing records yield disparate access and disclosure practices. It is possible to construct a detailed economic analysis about an individual, or develop their criminal profile using publicly available, individually identifiable information from government records.

While not all types of records are necessarily available from every jurisdiction, the information that may be available for a given individual can include:

- Name and address (voter registration)
- Home ownership (land title)
- Home loan (land title)
- Assessed value of home (property tax)
- Size of home, price, physical description (land title)
- Parents (birth and death records)
- Sex (birth and death records)
- Date of birth (birth and death records)
- Selected occupations (occupational licenses)

- Make and model of automobile owned (motor vehicle)
- Automobile loans (motor vehicle)
- Political party registration (voter registration)
- Voting frequency (voter registration)
- Political contributions (Federal Election Commission)
- Selected hobbies (hunting/fishing licenses)
- Boat/Airplane ownership (license)

Considerably more information may be available in public records about an individual who has interacted with the courts as a criminal defendant, as a plaintiff or defendant in civil litigation, as a juror, through divorce proceedings, in bankruptcy proceedings, as a beneficiary of a will, or in other ways. Additional information is also available about individuals who are required to file information on stock ownership with the Securities and Exchange Commission; political candidates and government employees, recipients of student loans, housing loans, small business loans; and employees who have filed workers compensation claims.

Special Concerns About Computerized Records

The trend of modern information policy has been to support the availability of computerized government records in electronic formats convenient to users. Legislation to support access to computerized records has been proposed or adopted in many jurisdictions. But consideration must be given to the threats to privacy raised when personal records are computerized.

The availability of computers and networks may result in instantaneous, unrestricted, world-wide access to digital government records. Broader availability may intensify the privacy intrusion that flows from the initial disclosure.

Decisions about disclosure tend to be made through a system-by-system approach, and the overall effects of the availability of many different types of personal information from disparate government systems may be ignored.

Purpose of Government Records and the Need for Practical Obscurity

Public access to government records serve several important policy goals. Individuals need government information to make political decisions about government programs, legislative and regulatory options and candidates running for office. Individuals need government information to assist in oversight of and accountability for government programs. Government records also assure the accountability of individuals, as in cases of business and real estate transactions.

While it is critical that these needs continue to be served, it is important that information be used for the reasons it was collected – to assure accountability.

Public records information was not meant to be searchable in a database, nor was it intended for use in marketing. Simply because a tradition of collection of information exists does not mean that it should be collected and made public in the future, particularly in light of technological developments that facilitate expanded and easier access.

It is critical that assessments about the appropriateness of access to public records and the role of consumer choice for incompatible uses be determined on a case by case basis, balancing competing interests in information availability and individual privacy.

Additional Work In Progress

As it continues its inquiry into the issue of consumer profiling, CDT recommends that the Commission take note of work being carried out at the federal and state level.

The National Criminal Justice Association and the U.S. Department of Justice, Office of Justice Programs is considering issues related to access to public records maintained by the justice system, including the role of privacy impact statements and the importance of building privacy into public record access systems. Their draft Working Paper, “Public Access Guide for Justice Information Systems: A Guideline for Developing Privacy and Public Access Policy for Justice Information,” is a useful resource.

It is also important to look to the states, where much of the work on this issue is ongoing. The state of Washington has conducted an inquiry into the appropriateness of their public records policy. Early in the debate, Washington decided on a relatively liberal policy. The state is now considering whether that policy should be changed. California five years ago convened a committee to study the use of court records. Other states to watch are Wisconsin, Indiana, Maryland and Colorado, where court cases and legislative activity have prompted work on this issue.