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Texas Court Clerks Wary Of Single, Statewide Access To Records

Texas clerks of court are at odds with the state over its plan to implement a statewide online access system for court records, to be run by a third-party software vendor.

At a packed meeting of the Judicial Committee on Information Technology, clerks expressed concerns that the database will undermine their authority to decide how, when or if court documents are made available online.

Clerks were also concerned that the system raises financial and liability issues.

To ensure uniformity of online access to court records, the Judicial Committee urged the Texas Supreme Court to mandate e-filing for all court records and to set up a statewide access system run by a third-party software vendor.

That system, a site called re:SearchTX, already is available for judges, and the Judicial Committee hopes it will soon be available for attorneys and members of the public.

According to an October Texas Bar Journal article by Texas Supreme Court Clerk Blake Hawthorne, 98 percent of 3,000 attorneys surveyed by the Office of Court Administration favored a statewide court records access system.

"The survey also showed that many Texas attorneys and their staffs want to be able to search the court records of all 254 counties at once, with the ability to immediately download those records 24 hours a day, seven days a week," Hawthorne wrote.

He said that attorneys are frustrated by the varying degrees of difficulty in getting court information from one county to another.

Some counties require attorneys to pay subscription fees, which Hawthorne said can be expensive when an attorney does not regularly work in a county, while other counties charge $1 per page without a subscription.

Texas' online database will charge 10 cents a page and a maximum of $6 per document.

Sharena Gilliland, district clerk for Parker County, a suburban county in the Dallas-Fort Worth Metro Area, said clerks are not totally opposed to an online database, but believe courts should be able to decide whether they want to opt in or out of the system.

At the committee meeting, attorney Carlos Soltero said that Texas law allows its Supreme Court "vast" authority to promulgate rules, but Gilliland said that based on the state constitution, district and county clerks are custodians of records in their courts and must provide written consent for records to be placed on the internet.

"We don't object to technology; we don't object to changing trends of what's happening in the legal field … we just want to make sure that we're following the statutes and what is legal," Gilliland said.

She said the clerks, tasked with redacting sensitive information, are concerned about protecting the privacy of their constituents, "because there's so much information contained in these records."

"We've never received any formal instructions on what to do about any sensitive records that are out there," Gilliland said.

While the committee intended to vote Friday on a number of recommendations to give to the Supreme Court on rules of access to re:SearchTX for judges, attorneys, and the public, they voted to postpone making any recommendations on public use for 45 days, to get more input from county and district clerks.

Shelby Court To Get New Justice Information System

Shelby County, Tenn., plans a major change to the computer system that tracks information about criminal cases.

As part of a $9.7 million project to integrate criminal justice information systems with new technology, information from cases since 1981 will be reformatted into a new system for people who need minute-by-minute access.

The project will bring new websites to the public and software to public defenders and prosecutors, as well as launching a new offender management system for the Shelby County Sheriff's office, Shelby County Jail and Division of Corrections.

Does FOIA Cover Court Records? No, Court Administrators Say

The Virginia Supreme Court's Office of the Executive Secretary has repeatedly refused a request from the Daily Press to release its compilation of case records from most of the state's circuit courts.

The records sought compiles summary information about almost every circuit court case in the state.

For criminal cases, it includes the defendant's name, the charges and what the judge decided. It includes information about when a criminal offense occurred, when a defendant was arrested and whether the original charge was reduced.

The office believes the record is not subject to the Freedom of Information Act. FOIA exempts records that court clerks are required by law to keep, but the office is not a clerk and the state law does not mention the compilation of the case records.

Despite repeated requests, the office would not say what section of the Code of Virginia says the database is a record that court clerks are required to keep.

An Office of the Executive Secretary spokeswoman, Kristi S. Wright, said that because the information is available by search, one case at a time, the office does not need to provide its record compiling that information.

"Our position is that these records are exempted from the Virginia Freedom of Information Act. These are public records and are currently available to you, but not in the statewide and searchable format you want them," Wright said. "Access to information regarding the cases heard in Virginia's courts may be obtained through attendance of public court proceedings, review of the public paper records maintained in the paper case files, and review of case information available both online and at public access terminals in clerk's offices."

All Aboard - PACER Lawsuit Goes Class Action

A lawsuit that claims the public is being overcharged by the US government's website for accessing federal court records just took a major step forward. A federal judge overseeing the litigation against PACER, the Public Access to Court Electronic Records system, just certified the case as a class action—meaning anybody who has used the service between 2010-2016 might be entitled to refunds if the government loses or settles.

Three nonprofits last year brought the suit that claims millions of dollars generated from a recent 25-percent increase in page fees are being illegally spent by a federal agency known as the Administrative Office of the Courts (AO). The cost for access is 10 cents per page and up to $3 a document. Judicial opinions are free.

The case is being brought by the National Consumer Law Center, the Alliance for Justice, and the National Veterans Legal Services Program. The organizations claim that, while the fees my not be onerous to some, for others the amount adds up and may hinder public access. What's more, they claim that the fees breach a congressional act—the E-government Act of 2002—requiring that PACER only levy charges that cover the government's cost to maintain the program.

Millions of dollars in fees have been diverted to other courthouse projects instead, the suit maintains. The system, once a dial-in phone service, became an Internet portal in 1998. Fees began at 7 cents per page, rose to 8 cents, and now are at 10 cents.

US District Judge Ellen Segal Huvelle of the District of Columbia noted that her ruling (PDF) means the case moves to litigating the merits of the lawsuit and "in no way resolves the merits of plaintiffs' challenge to the PACER fee schedule."

In a separate order, (PDF) the judge instructed the plaintiffs to begin the process of notifying PACER users if they want to join the lawsuit. The merits of the case will be litigated soon thereafter.

Yolo Online

Yolo County, CA Court announced a new online case management system which allows the public to view information including court calendars, party information, charges, dispositions and case events via a link on the Court's webpage.

"This tool will increase the amount of information available without having to come to the courthouse to find it; a tremendous convenience to the public," stated Court Executive Officer Shawn Landry.

"We are only one of a handful of California courts that offer online access to this kind of case information," said Presiding Judge Dave Rosenberg. "A remarkable achievement for a court our size with extremely limited resources."

Website link: yolo.courts.ca.gov.

States, Counties, Cities, Your Government Sells Off Public Access To Private Contractors

Tom MacWright, a software engineer who cycles to work in Washington, D.C., would be breezing along 14th Street NW when he suddenly would find himself boxed out of the city's bike lanes.

Businesses were running valet parking stations in the middle of the lanes, forcing cyclists to swerve into the road or stop to avoid a collision. MacWright, who blogs about cycling, privacy and technology, thought this was probably illegal. He wanted to be able to cite the law on his blog and a website he was developing for cyclists in the area.

In Washington, D.C., some businesses run valet parking stations in the middle of bike lanes, causing hazards for cyclists. When software engineer and cyclist Tom MacWright decided to blog about the issue, he found he couldn't link to the city's laws because a private contractor owned the publication rights.

"I wanted to create a reference to show what the current laws were and link to them," he said. "And I wanted to link to primary sources."

In theory, that sounds relatively easy. State and local laws usually can be found online. But in the District and dozens of other cities and states, the rights to publish those laws don't belong to the people or the governments. They belong to private contractors.

The fight to unravel that legal maze put MacWright in the epicenter of a long-standing debate over private companies that are controlling access to government data, documents and laws. He and others are trying keep in the public domain all sorts of data, documents, regulations and laws that taxpayers pay the government to develop but then often cannot obtain without putting up a fight or a paying hundreds or thousands of dollars in fees.

Government agencies, in many instances, have given contractors exclusive rights to the data. The government then removes it from public view online or never posts the data, laws and documents that are considered public information.

Public datasets that state and local governments are handing off to private contractors include court records and judicial opinions; detailed versions of state and local laws and, in some cases, the laws themselves; building codes and standards; and public university graduation records.

Much of the information collected and stored by private data companies such as LexisNexis, Westlaw or CrimeMapping.com is not available to the public without a price. The information that is available often is not searchable, cannot be compared with data from other jurisdictions and cannot be copied unless members of the public pay hundreds or thousands of dollars in subscription fees.

Sometimes, governments pay the companies to put the data into a useful format; other times, they turn over the data, get it back from the company in a useful format and give republishing rights to the company, which can then sell the data, laws and documents to the public.

The bottom line is good for the vendors, which can make millions of dollars from the sale of public information. But the public, who paid for the information to be developed in the first place, often is left on the outside, unable to get to the information as quickly as the private vendor, if they can get it at all, without paying for it.

In a vast number of these deals, the contractor gets to control the flow of information, restrict its duplication and downloading, and repackage and sell it to other clients, such as businesses, that want quick information about crime near their facilities. Or they publish state laws, regulations and building codes – sometimes with commentary – and then sell the records, often becoming the only "public" source of the information.

State and local governments often still are stuck in the digital past. Some departments lack the funding or internal expertise to build an open-source website and look for outside vendors, which then demand some type of exclusive control. Others continue to rely on paper reports that haven't been digitized and need vendors to put them online and crunch the data.

Still others, eager to make use of sophisticated mapping tools and the reports they can produce, have gone to outside vendors to build data portals and mapping and alert systems. But these deals usually include limits on use by others – imposed by the contractor and agreed to by the government – that restrict the public's access and right to republish without permission from the vendor.

On the LexisNexis crime-mapping site, formerly known as RAIDS Online but rebranded as Community Crime Map, the user needs to agree to lengthy terms of use that, among other requirements, say the user may gain access to the site for "personal, non-commercial use only" and may not "duplicate, publish, modify, or otherwise distribute the material on the Site unless specifically authorized in writing by (LexisNexis) to do so." CrimeView – a crime analysis tool from The Omega Group, which works with law enforcement agencies – imposes similar restrictions.

Restrictions, the vendors say, must be imposed because they have turned the data into a new format – such as a map – and created tools that are copyrighted. Although the data are public, the company can insist that the material can be viewed but not copied, downloaded or in some other way appropriated without the company's permission or a payment plan.

Violent Crime > Rapes: Countries Compared

Large numbers of rapes go unreported. South Africa is estimated to have 500,000 rapes per year, Egypt 200,000, China 32,000 and the UK and USA with 85,000 rapes per year.

Privacy Law In The UK - Retention Of Personal Data

Principle 5 requires you to retain personal data no longer than is necessary for the purpose you obtained it for. This principle has close links with both principles 3 (adequacy) and 4 (accuracy). Ensuring personal data is disposed of when no longer needed will reduce the risk that it will become inaccurate, out of date or irrelevant.

In brief – what does the Data Protection Act say about keeping personal data?

-The Act does not set out any specific minimum or maximum periods for retaining personal data. Instead, it says that:

-Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

This is the fifth data protection principle. In practice, it means that you will need to:

-review the length of time you keep personal data;
-consider the purpose or purposes you hold the information for in deciding whether (and for how long) to retain it;
-securely delete information that is no longer needed for this purpose or these purposes; and
-update, archive or securely delete information if it goes out of date.

In more detail…

-Why should I worry about retaining personal data?
-What approach should I take to decisions about retaining personal data?
-What determines the length of a retention period?
-What about keeping shared information?
-Why should I worry about retaining personal data?

Assuming that you have a good reason for processing the personal data in question, it is obvious that discarding that data too soon would be likely to disadvantage your business and, quite possibly, to inconvenience the people the information is about as well. However, keeping personal data for too long may cause the following problems:

-There is an increased risk that the information will go out of date, and that outdated information will be used in error – to the detriment of all concerned.
-As time passes it becomes more difficult to ensure that information is accurate.
-Even though you may no longer need the personal data, you must still make sure it is held securely.
-You must also be willing and able to respond to subject access requests for any personal data you hold. This may be more difficult if you are holding more data than you need.

We have already mentioned the links between the third, fourth and fifth data protection principles. So, for example, personal data held for longer than necessary will, by definition, be excessive and may also be irrelevant. In any event, it is inefficient to hold more information than necessary.

What approach should I take to decisions about retaining personal data?

-It is good practice to regularly review the personal data you hold, and delete anything you no longer need. Information that does not need to be accessed regularly, but which still needs to be retained, should be safely archived or put offline.

-If you hold more than small amounts of personal data, it is good practice to establish standard retention periods for different categories of information. You will need to take account of any professional rules or regulatory requirements that apply. It is also advisable to have a system for ensuring that your organisation keeps to these retention periods in practice, and for documenting and reviewing the retention policy. For example, if any records are not being used, you should reconsider whether they need be retained.

-If you only hold a modest amount of personal data, you may not need a formal data retention policy. You must still comply with the law, of course, so it is good practice to conduct a regular audit, and to check through the records you hold to make sure you are not holding onto personal data for too long, or deleting it prematurely.

What determines the length of a retention period?

Personal data will need to be retained for longer in some cases than in others. How long you retain different categories of personal data should be based on individual business needs. A judgement must be made about:

-the current and future value of the information;
-the costs, risks and liabilities associated with retaining the information; and
-the ease or difficulty of making sure it remains accurate and up to date.

The appropriate retention period is also likely to depend on the following:

Continues next page

Alaska Hands Anvik Tribal Court Jurisdiction To Try Lower Level Criminal Cases

Alaska has signed an agreement to allow the Anvik tribal court to handle a number of crimes. Those crimes include alcohol and drug offenses, as well as domestic violence cases.

Attorney General Jahna Lindemuth made the announcement surrounded by more than a dozen state and tribal officials at Governor Walker's Anchorage office. State money is short and getting shorter, she said, and already the state's District Attorneys have to drop cases because of a lack of resources to pursue them.

“The problem that we are facing, and that we are dealing with even now with budget cuts, is that a lot of the low-level misdemeanor crimes are simply not getting prosecuted whatsoever, just because our resources are having to be focused on the more violent offenders and the felony types of cases. So we're hopeful that this will allow greater prosecution of offenses, and actually increase public safety,” Lindemuth said.

A number of tribes and Native non-profit corporations have been involved in negotiating this agreement, including the Association of Village Council Presidents. The process has taken three years, and more agreements are likely to follow soon.

“I know the Walker administration remains committed to working with tribal governments,” Lindemuth said. “And I'm hopeful that this is the first step of many where we work towards the goal of increasing public safety in Alaska.”

Anvik Village Chief Carl Jerue Jr. signed the agreement on behalf of his tribe at the news conference.

“In the future,” he said, “things will be better for all of us working together.”

The deal requires anyone accused, tribal member or not, to agree to be tried in tribal court. Then their case could be diverted, and the state court system would no longer be involved unless the tribal court decides to hand it back. While the agreement only applies to certain misdemeanor offenses, it includes some crimes that have been huge problems in many rural communities, including domestic violence. The state Law Department's Criminal Justice head, John Skidmore, explained how the process would work for Fourth Degree Assault, a Class A misdemeanor.

“In that circumstance, there are state laws that require an offender to be arrested for domestic violence,” Skidmore said. “Those provisions still apply; the individual would still be arrested. They would be given the opportunity when they are arraigned at state court to divert into the tribal program.”

Asked if the agreement could potentially give the tribes the clear legal power to banish offenders, Skidmore said that it did.

“The agreement is one in which the state is saying we are not going to have jurisdiction over this. We are turning it over to the tribes for whatever tribal remedies they believe to be appropriate. And the offender, because they have voluntarily agreed to accept that, then they are also agreeing to whatever tribal remedy might be imposed,” Skidmore said. “In the case of banishment, it's not the state that takes that position. If the tribe thinks that's what's appropriate, and that's what the offender has agreed to follow by those, then there isn't a legal problem with that, because the state's not endorsing that; it's simply allowing communities and tribes to use those cultural remedies that they have relied upon for generations and have been very successful.”

Mark Gasco of the Tanana Chiefs Conference, who has been closely involved in the negotiations, said banishment would be an unlikely outcome, at least for Anvik.

Privacy Law In The UK - Retention Of Personal Data

(continued from previous page)

What the information is used for

How long you should keep personal data depends on the purpose for which it was obtained and its nature. If it continues to be necessary to hold the data for one of the reasons set out in Schedules 2 and 3 of the Data Protection Act (such as the performance of a public function or compliance with employment law), then you should retain it for as long as that reason applies. On the other hand, information with only a short-term value may have to be deleted within days.

Example

A bank holds personal data about its customers. This includes details of each customer's address, date of birth and mother's maiden name. The bank uses this information as part of its security procedures. It is appropriate for the bank to retain this data for as long as the customer has an account with the bank. Even after the account has been closed, the bank may need to continue holding some of this information for legal or operational reasons.

Example

Images from a CCTV system installed to prevent fraud at an ATM machine may need to be retained for several weeks, since a suspicious transaction may not come to light until the victim gets their bank statement. In contrast, images from a CCTV system in a pub may only need to be retained for a short period because incidents will come to light very quickly. However, if a crime is reported to the police, the images will need to be retained until the police have time to collect them.

Where personal data is held for more than one purpose, there is no need to delete the data while it is still needed for any of those purposes. However, personal data should not be kept indefinitely "just in case", or if there is only a small possibility that it will be used.

Example

A tracing agency holds personal data about a debtor so that it can find that individual on behalf of a creditor. Once it has found the individual and reported to the creditor, there may be no need to retain the information about the debtor – it should be removed from the agency's systems unless there are good reasons for keeping it. Such reasons could include if the agency has also been asked to collect the debt, or because the agency is authorised to use the information to trace debtors on behalf of other creditors.

There may often be good grounds for keeping personal data for historical, statistical or research purposes. The Data Protection Act provides that personal data held for these purposes may be kept indefinitely as long as it is not used in connection with decisions affecting particular individuals, or in a way that is likely to cause damage or distress. This does not mean that the information may be kept forever – it should be deleted when it is no longer needed for historical, statistical or research purposes.

The surrounding circumstances

If personal data has been recorded because of a relationship between you and the individual, you should consider whether you need to keep the information once the relationship ends.

Example

The individual may be a customer who no longer does business with you. When the relationship ends, you must decide what personal data to retain and what to delete.

You may not need to delete all personal data when the relationship ends. You may need to keep some information so that you can confirm that the relationship existed – and that it has ended – as well as some of its details.

Example

In the previous example, you may need to keep some personal data about the customer so that you can deal with any complaints they might make about the services you provided.

Example

An employer should review the personal data it holds about an individual when that individual leaves the organisation's employment. It will need to retain enough data to enable the organisation to deal with, say, providing references or information about the individual's pension arrangements. However, personal data that is unlikely to be needed again should be removed from the organisation's records – such as the individual's emergency contact details, previous addresses, or death-in-service beneficiary details.

Example

A business receives a notice from a former customer requiring it to stop processing the customer's personal data for direct marketing. It is appropriate for the business to retain enough information about the former customer for it to stop including that person in future direct marketing activities.

In some cases, you may need to keep personal data so you can defend possible future legal claims. However, you could still delete information that could not possibly be relevant to such a claim. Unless there is some other reason for keeping it, personal data should be deleted when such a claim could no longer arise.

Example

An employer receives several applications for a job vacancy. Unless there is a clear business reason for doing so, the employer should not keep recruitment records for unsuccessful applicants beyond the statutory period in which a claim arising from the recruitment process may be brought.

Any legal or regulatory requirements

There are various legal requirements and professional guidelines about keeping certain kinds of records – such as information needed for income tax and audit purposes, or information on aspects of health and safety. If an organisation keeps personal data to comply with a requirement like this, it will not be considered to have kept the information for longer than necessary.

Agreed industry practices

How long certain kinds of personal data should be kept may also be governed by specific business-sector requirements and agreed practices. For example, we have agreed that credit reference agencies are permitted to keep consumer credit data for six years.

What should happen to personal data at the end of its retention period?

At the end of the retention period, or the life of a particular record, it should be reviewed and deleted, unless there is some special reason for keeping it. Automated systems can flag records for review, or delete information after a predetermined period. This is particularly useful where many records of the same type are held.

However, there is a significant difference between permanently deleting a record and archiving it. If a record is archived or stored offline, this should reduce its availability and the risk of misuse or mistake. However, you should only archive a record (rather than delete it) if you still need to hold it. You must be prepared to give subject access to it, and to comply with the data protection principles. If it is appropriate to delete a record from a live system, it should also be deleted from any back-up of the information on that system.

What about keeping shared information?

Where personal data is shared between organisations, those organisations should agree about what to do once they no longer need to share the information. In some cases, it may be best to return the shared information to the organisation that supplied it, without keeping a copy. In other cases, all the organisations involved should delete their copies of the information.

Example

Personal data about the customers of Company A is shared with Company B, which is negotiating to buy Company A's business. The companies arrange for Company B to keep the information confidential, and use it only in connection with the proposed transaction. The sale does not go ahead and Company B returns the customer information to Company A without keeping a copy.

The organisations involved in an information-sharing initiative may need to set their own retention periods, because some may have good reasons to retain personal data for longer than others. However, if shared information should be deleted, for example because it is no longer relevant to the initiative, then all the organisations with copies of the information should delete it.

Dennis Brownstein's Extreme Court News (And Other Things, Too)

Read My Blog

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TV Judges Top This List

An edition of TV Guide Magazine profiles the best-paid television personalities in America.

Judy Sheindlin, star of the ratings-bonanza syndicated daytime television show Judge Judy, who portrays a judge in a courtroom setting, tops the list with an annual salary of $45 million.

That's about 207 times the salary earned by the nation's top real world judicial official, Chief Justice of the United States John G. Roberts. Chief Justice Roberts will earn $217,400 in 2012. Judge Joe Brown -another TV judge-also appears on the list of best-paid television personalities, collecting $20 million a year.

Perhaps more astonishing is the fact that the combined paychecks of all state Supreme Court Justices across the 50 United States total only slightly more than Sheindlin. Combined, the 341 men and women who serve on a state high court earn $52,136,282. That is an average of $152,892, or about 1/294th of Judge Judy's annual keep.

Scotland Yard Criminal Record Check Backlog 'Losing People Jobs'

Nurses, carers and teachers are losing out on job offers as Scotland Yard struggles to tackle a "scandalous" backlog in criminal record checks, it is claimed.

Latest figures show Scotland Yard takes an average of almost three months to complete background checks on new recruits in health, care and education.

Some would-be employees have waited for up to nine months before being able to start after being offered jobs working with children or vulnerable adults.

Diane Abbott, the shadow Home Secretary, said, "This backlog is a scandal."


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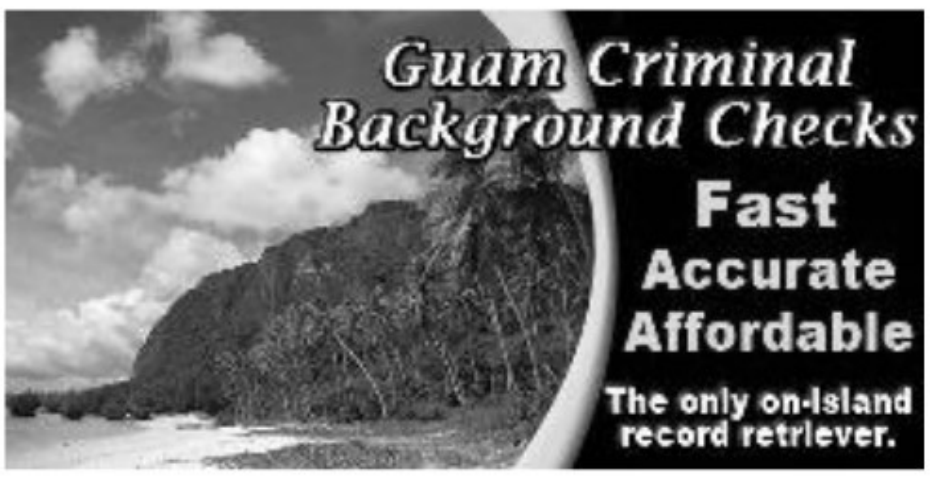
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