
Public Benefits from Open Public Records

Open access to public records serves many valuable purposes, ranging from providing the public with the information it needs to select and oversee the government to providing the critical infrastructure of our information economy.

The economic benefits of open public records—such as being able to identify and verify the qualifications of consumers and businesses, facilitate rapid and accurate credit decisions, and expand the range and convenience of payment mechanisms and the number of Americans who qualify for them—impact consumers every day. (They are the subject of another Coalition for Sensible Public Records Access paper, *Consumer Benefits From Open Public Records*.)

But there are other critical public and social benefits that flow from open public records that are often overlooked. These uses of public records in our democracy are so common, and their value so great, that we frequently take them for granted. Consider just a few of the essential benefits that open public records provide:

Information for Self-Government

Access to public records is central to electing and monitoring public officials, critiquing government operations, understanding the operation of the law, ensuring confidence in government, evaluating the cost-effectiveness and efficiency of government bodies, and protecting against secret or illicit government activities.

As James Madison wrote almost two centuries ago: “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”¹

It is for this reason that federal law, and the laws of the states and the District of Columbia, provide for disclosure of all information held by the government, except where such disclosure would offend a specific, enumerated interest. And when lawmakers have sought to restrict access to public information, the Supreme Court has responded by identifying both a common law¹ and a constitutional² right of access.

The Coalition for Sensible Public Records Access (CSPRA) is a not-for-profit organization dedicated to preserving responsible access to public record information. CSPRA sponsors research and publications, public fora, legislative briefings, and other activities designed to foster a more thoughtful debate about how such access should be balanced with privacy concerns. Additional information about CSPRA is available at www.cspra.us.

Public record information is especially important for guaranteeing the integrity of the political process. As the nation has so recently witnessed in the case of Florida, a state with an unparalleled tradition of open public records, access to voter records, ballots, judicial proceedings, and other public records are critical to public oversight of, and confidence in, the electoral process and the resolution of electoral disputes. Similarly, federal law provides that Federal Election Commission filings about contributors to federal campaigns shall be public.

Information to Protect Public Health, Safety, and Property

Law enforcement relies on public record information to prevent, detect, and solve crimes. In 1998 the FBI alone made more than 53,000 inquiries to commercial on-line databases to obtain a wide variety of “public source information.” According to Director Louis Freeh, “Information from these inquiries assisted in the arrests of 393 fugitives wanted by the FBI, the identification of more than \$37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning.”³

Information to Inform the Public

Access to public records is essential for journalists and other researchers to gather information and inform the public about matters of public importance. For example:

- *San Francisco Examiner* reporter Candy Cooper discovered that police investigated rapes in upscale Berkeley far more readily than in the crime-infested neighborhoods of Oakland by systematically examining local government records.
- The *St. Petersburg Times* searched public records to discover that a man running for city treasurer had not disclosed that he had filed for personal bankruptcy three times and corporate bankruptcy twice, and that the new director of a large arts organization that solicited donations had been charged with fraud in his home state.
- Tampa’s News Channel 8 mapped the location of all drug arrests—information obtained from public records—to uncover a narcotics ring across the street from an elementary school.

In fact, a recent study by Indiana University Knight Journalism Fellow Brooke Barnett found that journalists routinely use public records not merely to check facts or find specific information, but to actually generate the story in the first place. According to that study, 64 percent of all crime-related stories, 57 of all city or state stories, 56 percent of all investigative stories, and 47 percent of all political campaign stories rely on public records. Access to public record databases is “a *necessity* for journalists to uncover wrongdoing and effectively cover crime, political stories and investigative pieces.”⁴

Information to Verify Identity and Locate Individuals

Public records are a key source of information about citizen addresses. This information is used to locate missing family members, owners of lost or stolen property, organ and tissue donors, and members of associations and religious groups and graduates of schools and colleges;

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and to identify and locate suspects, witnesses in criminal and civil matters, tax evaders, and parents who are delinquent in child support payments.

The Association for Children for Enforcement of Support reports that public record information provided through commercial vendors helped locate over 75 percent of the “deadbeat parents” they sought.⁵ New York City’s Child Support Enforcement Department used public record information supplied by ChoicePoint to recover \$36 million over two years from thousand of non-custodial parents.⁶

Information to Target Interested Citizens and Consumers

Public record information helps sellers accurately and efficiently identify citizens to receive political, charitable, and religious information based upon their own interests. As a result, political campaigns can target their solicitations to registered members of appropriate political parties. The American Association of Retired People can target its officers only to older Americans, and veteran’s organizations can appeal only to people who have served in the armed forces.

Target marketing dramatically reduces the cost of contacting citizens and consumers, reduces the volume and environmental impact of unwanted or undeliverable mail, and enhances public satisfaction by increasing the chance that the mail and calls citizens and consumers receive are actually of interest.

The use of public record information can also save lives, for example, when Firestone and Ford Motor Company used public records to identify and obtain current addresses for people who needed to receive information on replacing defective tires.

The Role of Commercial Intermediaries

Virtually all of these valuable uses of public records depend in large part on commercial users and resellers of public record data. These commercial intermediaries collect records from disparate sources and make them available conveniently, reliably, and at low cost. These commercial information providers *both* enhance access, with all of its benefits, *and* greatly reduce the burden on government clerks by filling many requests for records that would otherwise consume public resources. Moreover, commercial intermediaries often update public record information, correct inaccuracies, and then provide the improved version back to the governmental record custodians.

So, for example, most attorneys use services provided by Lexis and Westlaw and other commercial providers for convenient, desktop access to court records, rather than apply to courts themselves for those records. Similarly, journalists increasingly rely on commercial intermediaries. Most employers, professional associations, child care facilities, and others who need to access information turn not to government agencies, but to commercial intermediaries for this information. According to Director Louis Freeh, the FBI obtains access to public record information via commercial providers precisely because such access “allows FBI investigative personnel to perform searches from computer workstations and eliminates the need to perform

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more time consuming manual searches of federal, state, and local records systems, libraries, and other information sources.”⁷

This highlights another critical feature of our nation’s public record information infrastructure: Access is convenient and inexpensive precisely because commercial intermediaries assemble the information for such a wide variety of uses. If the FBI or the Association for Children for Enforcement of Support or any other requester had to bear the actual cost of collecting and accessing those records, the organization would be unable to afford access and the public would suffer as a result. It is, therefore, pointless to suggest that public records should remain public only for certain users or for certain uses. In addition to the constitutional and practical issues that such proposals raise, they also reflect a fundamental misunderstanding of how our public records system works and the many and diverse benefits that result from those records being open and accessible.

¹ Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978).

² Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982); Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984); Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986).

³ Hearings before the Subcomm. for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies of the Comm. on Appropriations, U.S. Senate, March 24, 1999 (statement of Louis J. Freeh).

⁴ Brooke Barnett, Use of Public Record Databases in Newspaper and Television Newsrooms (2000) (unpublished ms.) (emphasis added).

⁵ Hearings before the Committee on Banking and Financial Services, U.S. House of Representatives, July 28, 1998, (statement of Robert Glass, Vice President and General Manager of the Nexis Business Information Group of Lexis-Nexis).

⁶ See <http://www.choicepoint.net/choicepoint/productwebdisplay.nsf/Child?openform>.

⁷ Statement of Louis J. Freeh, *supra*.