

THE CASE FOR OPEN PUBLIC RECORDS: A Position Paper

Prepared by
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Americans have waged war over public records for many years. One side claims public vital records (births, marriages, and deaths) should be private to prevent identity theft. The other side says public records should remain open, acknowledging our right to information as established almost 400 years ago in the shining “city on a hill.”¹ Our citizenry overwhelmingly agrees that public access to official records is essential to democracy.²

Recently citizens in many states have faced increased difficulty accessing vital records, especially birth records. Vital records may be found in government offices on the town, county, or state level. They may be on microfilm, CD, or in published materials on or off the Internet. Since 2001, many states have tightened public record laws, and more records are threatened every year.

Keep public records open

Well intentioned laws restricting vital records will not prevent terrorist attacks or identity theft. States should leave public records, created with taxpayers’ funds, open to the public if there is no proven harm. Certified copies of birth certificates should be restricted. These are required to obtain a driver’s license or passport. Non-certified copies for informational purposes are sufficient for public use. Social Security numbers should be deleted on records of living persons. Laws restricting public records punish law-abiding groups with legitimate needs. They include genealogists, historians, the news media, the information service industry, medical researchers, funeral directors, academic researchers, and others. Closed records prevent them from doing their work properly. The heart of democracy is found in its open records.

Closed record argument baseless

Privacy advocates would close all vital records to the public under the guise of protecting citizens against identity and terrorist crimes. Their argument is flawed. Baseless claims that vital records, easily accessed, are increasingly used to steal identities do not stand in the face of factual surveys.

ID thieves rarely use public records

Identity thieves rarely use public records to obtain personal information of their victims.

The 2006 Javelin Identity Fraud Survey Report does not list public records as an identifiable source, but states that most cases of identity theft stem from 1) lost or stolen wallets, checkbooks, or credit cards (30%); 2) friends, acquaintances, relatives or in-home employees (15%); or 3) corrupt business employees (15%). This report surveyed 5,000 consumers, many of whom were ID theft victims, half of whom said they knew the source of their compromised data.³ The Federal Trade Commission, whose mission is to protect American consumers, does not list public vital records as a source of stolen identities.⁴

No proof of harm

After extensive research, **we find no evidence that public vital records significantly contribute to identity theft or terrorism**; we find only unsupported opinions. We also find no data that supports an increase in birth certificate fraud or that certificates were obtained from public record offices. For example, in Ohio, an open record state, Richard Rawlins, deputy director of Ohio Homeland Security, reported few cases of birth certificate fraud.⁵ As of 2006, terrorists had not used public records in this country for a terrorist act, according to Jeffrey Addicott, Director of the Center for Terrorism Law at St. Mary's University School of Law, San Antonio, Texas.⁶

The 2000 U.S. Inspector General's report on birth certificate fraud noted that the ease of obtaining birth certificates increased opportunities for theft.⁷ The report did not say these certificates were a source of crime. The report outlined the potential danger of birth certificate fraud, which "usually begins with a purchased, stolen, counterfeit, or altered birth certificate" that is then used to obtain other documents, such as a Social Security card and driver's license.⁸

Thieves thrive on the Internet

Identity thieves and terrorists don't spend hours combing government records for individual birth certificates. Privacy experts doubt that identity thieves go to the trouble of using indexes and looking up birth certificates. "Most identity theft is not targeted, it's opportunistic," says Beth Givens, director of Privacy Rights Clearinghouse, a nonprofit consumer group based in San Diego. Savvy ID thieves more likely would do a Google search to get names and birth dates.⁹ Highly organized gangs of identity thieves go hacking (breaking into databases) and "phishing" (scamming) on the Internet for Social Security numbers of living people, dates of birth and mothers' maiden names. These are three must-have pieces of information used to steal and assume identities.¹⁰

Sophisticated super-hackers are stealing personal data from government, banking, and data processing offices¹¹ at an alarming pace and now trading it on global online underground communities.¹² Criminals can easily get inexpensive fake birth certificates and other personal documents, stolen credit cards and PINs as well as access to bank and financial accounts.¹³

Protecting our finances

Lawmakers claim that closing records will ensure that stolen identities don't lead to personal financial ruin.¹⁴ This would be admirable had they shown that public vital records caused the financial problem. ID theft claims more than 10 million victims a year, according to the Federal Bureau of Investigation. It costs consumers and businesses \$50 billion a year in time and money to repair credit records and restore victims' good names.¹⁵

Summary

Legislators should keep public vital records open because we find:

- No proof that open records significantly contribute to ID theft or terrorism.
- ID thieves rarely use public records, relying instead on stolen or fraudulent data.
- Public benefits of access to records far outweighs their threat.
- Open records allow genealogists and others to do their jobs.

We recommend that:

- Leading authorities educate the public about open and closed public records.
- Private companies and government improve their protection of personal data.
- Lawmakers respond to the ID theft problem, not try to prevent a nonexistent problem.
- Concerned citizens tell their representatives that they want open public records.

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MEMBERS**

Co-chair Jean Foster Kelley, CG, Tampa, Florida, wanted to explore claims that public access to vital records contributes to identity theft crimes and helped form this group to study and report on the issue. She is president of the Florida Chapter of the Association of Professional Genealogists (APG) and is a family historian with more than twenty years experience in genealogical research. Jean has attended the Institute of Genealogy & Historical Research (IGHR), Samford University, Birmingham, Alabama, and National Institute on Genealogical Research (NIGR), Washington, D.C. Her e-mail address is jfkelley@tampabay.rr.com.

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¹ John Winthrop wrote the inspiring words on the *Arbella* as he approached Boston, saying “For we must consider that we shall be as a City upon a hill. The eyes of all people are upon us. . . . Soe that if we shall deal falsely . . . we shall be made a story and a byword throughout the world.” Robert C. Winthrop, *Life and Letters of John Winthrop* (1867), 19.

² Thomas Hargrove and Guido H. Stempel III, "Poll finds Americans concerned about government secrecy," Scripps Howard News Service, 8 March 2006;

http://www.shns.com/shns/g_index2.cfm?action=detail&pk=SUNSHINEPOLL-03-08-06: accessed 27 June 2007.

³ “New Research Shows Identity Fraud Growth Is Contained & Consumers Have More Control Than They Think,” PR Newswire, 31 January 2006; HighBeam Research, archived (<http://www.highbeam.com/doc/1G1-141491484.html>) and untitled chart showing sources of stolen personal information. The survey was conducted by Javelin Strategy & Research, based in Pleasanton, California, the leading provider of independent research and analysis in the financial services industry.

⁴ “How do thieves steal an identity,” Fighting Back Against Identity Theft, Federal Trade Commission, online <<http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html#Howdothievesstealanidentity>>, accessed 22 July 2007.

⁵ Brie Zeltner, “Ohio’s open-access rules bring ID-theft concerns; Anyone can obtain birth certificates,” *The Plain Dealer* (Cleveland, Ohio), 8 April 2007; NewsBank, available online at most public libraries, archived : accessed 27 June 2007).

⁶ Richard Willing, “Tax dollars to fund study on restricting public data,” *USA Today*, 6 July 2006; *USA Today.com*, archived (www.usatoday.com/news/washington/2006-07-05-foia-research_x.htm): accessed 4 July 2007.

⁷ June Gibbs Brown, Department of Health and Human Services, Office of Inspector General, “Birth Certificate Fraud,” Washington, September 2000. Online <<http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>>; printed 27 June 2007, ii.

⁸ “Birth Certificate Fraud,” Office of Inspector General, 7.

⁹ Zeltner, “Ohio’s open-access rules bring ID-theft concerns,” para. 21-22.

¹⁰ William Sherman, “Phishers reel in your I.D.,” *New York Daily News*, 22 May 2005; HighBeam Research (<http://www.highbeam.com/doc/1G1-132681758.html>): accessed 28 June 2007, para. 1.

¹¹ Dick Robinson, “Identity thieves aren’t stealing public genealogy records,” *Digital Genealogist*, May/June 2007; e-magazine by subscription (<http://www.digitalgenealogist.com/current.html>), 7, also citing Robert L. Rafford, “Identity Theft and Vital Records.” Online <<http://www.rootsweb.com/~ctpgc/IDTheft.html>>; printed 16 September 2006. Dick Robinson, “Identity thieves aren’t stealing public genealogy records,” *The Sun*, July 2007; e-newsletter, (<http://apgflorida.blogspot.com>: accessed 25 July 2007), para. 16

¹² “Symantec Reports Rise in Data Theft, Data Leakage, and Targeted Attacks Leading to Hackers’ Financial Gain; New Internet Security Threat Activity Research Reveals a Shift towards Collaborative, Global Online Communities Operated by Cyber Criminals,” 19 March 2007; M2 Presswire, HighBeam Research, archived (<http://www.highbeam.com/doc/1G1-160724307.html>), para. 8.

¹³ Bob Sullivan, “A portal on credit card crime,” *The Red Tape Chronicles*, 27 March 2007; (http://redtape.msnbc.com/2007/03/a_portal_on_cre.html#posts): accessed 23 May 2007), para. 4.

¹⁴ Emelie Rutherford, “Bill tightens access to birth, death data,” *The Boston Herald*, 20 October 2005; HighBeam Research (<http://www.highbeam.com/doc/1G1-137759393.html>): accessed 25 June 2007, para. 6. "It's inherent human nature to know who you are and where you came from, but we need to make sure that people's financial lives aren't ruined," said Timothy O'Neill, a spokesman for Sen. Susan Fargo (D-Lincoln), who co-sponsored the bill” [to restrict access to certified birth and marriage records to registrants, their family, and others designated by the family or authorized representatives].

¹⁵ Headline Archives, “Don’t Let This Happen to You,” Federal Bureau of Investigation, online <<http://www.fbi.gov/page2/oct04/preventidt102104.htm>>, accessed 2 May 2007.