

Public Support for Access to Government Records: A National Survey

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Paper submitted for consideration to the Law Division for the 1999 convention of the Association for Education in Journalism and Mass Communication
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ABSTRACT

This study reports the results of a national survey of the American public on their attitudes toward access to government records. The results indicate that the public strongly believes making government records publicly available keeps the government honest. Nevertheless, public support for access to specific records varies considerably depending on the nature of the record and the identity of the requestor. Overall, public attitudes toward access to government records appears remarkably homogeneous across conventional demographic and psychographic categories.

Access to government information is a cornerstone of American public policy at both the federal and state levels. Since government derives its just power from the consent of the governed, it is crucial that information about the workings of government is accessible to citizens. James Madison emphasized the importance of educated citizens: "A popular government without popular information or the means of acquiring it is but a Prologue to a Farce or Tragedy; perhaps both. Knowledge will forever govern ignorance: And people who mean to be their own Governors, must arm themselves with the power which knowledge gives." [1] A free flow of information is central to a self-governing democracy, and provides the rationale for our system of free expression expressed in the writings of First Amendment theorists such as Alexander Meiklejohn, Thomas Emerson, and Vincent Blasi. [2]

The U.S. Supreme Court has not recognized an expansive First Amendment right to obtain information that the government gathers, creates, or possesses. As Justice Potter Stewart put it: "The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act." [3] Nevertheless, access to at least some types of government information is implied by the Court's recognition of the public's right to attend trials and by a more general right to receive information. [4] Rights of public access to government records have also developed in the common law, albeit with an emphasis on the individual's need for the records rather than on the premise that the public has a general right to inspect public records. [5]

The right of access to government records is secured primarily through federal and state statutes. At the federal level, access laws are relatively new phenomena that developed in the two decades following World War II, beginning with the Administrative Procedures Act (APA) of 1946. [6] In 1966, the APA was amended to incorporate the federal Freedom of Information Act, under which all government information must be disclosed unless specifically ex-

empted for reasons such as national security, law enforcement or personal privacy. [7]

Before 1940, only 12 states had substantial public access statutes. By 1992, all 50 states and the District of Columbia recognized a statutory right of access to government records by the public. [8] The state statutes vary in the degree of openness allowed and the definition of public records. Some provide access to a narrow range of records, such as those required to be kept by state law; other state statutes take a sweeping view of access, opening nearly all records pertaining to state business.

With citizens' rights of access to government records largely determined by statute, legislatures are continually revising the laws, often in attempts to restrict the availability of certain categories of records. Exemptions are often implemented at the behest of business interests or quasi-government agencies, [9] but sometimes changes in open records laws are putatively made to protect individuals' privacy interests, such as the 1994 Driver's License Protection Act. [10] Public Attitudes Toward Access

Subject to the pressures of the legislative arena, the final scope of access to records laws relies on continuing public support for the proposition that the public has a right to know about government. To what extent do members of the public support the general principle that government information should be widely available? In what instances might people be willing to forego access to government records for a perceived greater good? With these questions in mind, a national telephone survey was undertaken to measure the depth and breadth of public support for access to government information, and explore under what circumstances the public may wish access to be curtailed.

While classical democratic political theory presupposes access to information about government, recent studies specifically ascertaining public opinion about access to government records are limited. A

1998 survey of California voters' attitudes toward access to government records found strong support for access to a wide variety of records, including some that have been traditionally closed to the public, such as disciplinary records of public employees and court records involving juveniles. In fact, 71% supported strengthening the state's freedom of information laws and 67% said they would definitely or probably support a state constitutional amendment guaranteeing access to government information at the state and local level.[11] A poll conducted by Brown University in 1997 found that 82% of Rhode Islanders agreed that "government records should be generally accessible to the public and that meetings of public bodies should be open to the public." [12]

Concerns about the privacy of personal information, however, may temper Americans' favorable attitudes toward access to government records. Stories of the misuses of government records appear regularly in the press. For example, a banker who sat on a state health commission accessed a list of people who had been diagnosed as having cancer and promptly called in their loans.[13] In the 1995 Equifax-Harris Mid-Decade Consumer Privacy Survey, 80% of respondents reported feeling they've lost control over how their personal information is circulated and used, compared with 71% in 1990; 47% said they are "very" concerned about threats to their personal privacy.[14]

The public's fear of being harmed by disclosure of personal information is both genuine and well founded, and has led to numerous legislative initiatives toward limiting access to certain government records. At the same time, people are also strong supporters of open records as a means of keeping government activities in the sunshine. Privacy and records access are important societal values and both receive public support when thought about independently. But the values of privacy and access sometimes collide. A report from a symposium on citizen privacy in Washington state illustrates the dilemma:

. . . [A] Washington ACLU board member and director of its privacy project,

opined that public records were a problem. He thought a public disclosure law was OK because it helped citizens keep watch on government. In that way, for instance, we could make sure the local assessor didn't give friends favorable assessments and tax breaks. But he didn't want ordinary folks to be able to see how much his house was worth. That would be revealing details of his private life, he said, and should be off limits.[15]

Awareness of the need for public access to government records has long been championed by the nation's press. Stories based on public records often disclose glaring shortcomings in the operation of government and expose ethical lapses or criminal behaviors on the part of prominent and ordinary citizens.[16] That the press should play a prominent role in scrutinizing the operations of government and accessing government records reflects the "watch dog" role of press in checking government activities.[17]

The buying and selling of public and private records, especially those in electronic formats, are a robust and hugely profitable enterprise in the United States.[18] The purchase of government public records by marketing firms and other businesses has led some state and local governments to regard their public "information by-products" as potential gold mines for new sources of revenue. The imposition of exorbitant fees for access to public databases presents a dangerous trend for journalism. News organizations routinely depend on access to such records to facilitate investigative reporting. For example, the Texas Department of Public Safety demanded the Houston Chronicle pay \$75 million for computer records of motorists' arrests and the State of Illinois wanted \$37.5 million from the Belleville News-Democrat for driver's license records for a story on voter fraud.[19]

A national survey was undertaken to examine public attitudes about access to government records generally and to measure support for access to specific types of government records. The questionnaire was designed to explore two research questions:

- (1) What kinds of government records does the public think should be available?
- (2) What are the general attitudes of the public about the availability of government records?

Method

A representative nationwide sample of 403 adults (age 18 and older) in the United States was contacted by telephone from November 5 to 15, 1998. The callers were trained graduate students. The sample was selected from the most recent Select Phone CD-ROM, a national telephone directories database.[20] In a repeated process, one of seven CD-ROM disks was randomly selected. After a disk was selected, a name with a corresponding telephone number was randomly selected. If the cursor fell on a nonresidential listing, the next residential listing down was selected. The last digit of the selected number was randomly changed to include unlisted numbers. After three attempts to reach each number, the response rate (excluding non-working numbers, faxes, and ineligible) was 61%.

The questionnaire is reproduced in Appendix A. The main parts of the questionnaire measured (a) people's attitudes toward making a series of specific types of government records available (questions 2-10) to which respondents replied "available to anyone," "available in some instances," or "never available" and (b) people's attitudes toward a series of statements about access to government records (questions 11-20) measured on a five-point scale from strongly agree to strongly disagree.[21] Other questions asked whether there was a government worker in the household (question 21), political orientation (question 22), age (question 23) level of education (question 24), race (question 25) and Hispanic ethnicity. Callers coded respondents as male or female.

An attempt was made to construct a "support for access" scale using the items measuring people's attitudes toward making specific types of government records available (questions 2-10). The coefficient alpha was determined to be too low (Cronbach's alpha = .64) for the scale to be reliable.

Results

The sample was 53% female and 47% male. The distribution by race was 85% white, 9.1% black, 1.3% Asian and 3.0% other. Approximately 9% percent of the sample identified itself as Hispanic. The mean age of respondents was 44; the median age was 41. One-quarter of the sample was age 28 or younger; one-quarter of the sample was age 57 or older. The distribution of highest educational level was: 5% had less than a high school degree; 21% had a high school degree; 28% had some college or vocational-technical training; 30% had a college degree; 3.5% had completed some graduate work; and 12% held a graduate degree. A plurality of respondents (44%) characterized their political orientation as middle-of-the-road; 29% said they were conservative and 20% said they were liberal. Twelve percent reported that they or members of their family were government employees.

Public support for access to government documents varies considerably depending on the nature of the record. As shown in Table 1, a majority of respondents thought only three of the eight records asked about should be available to anyone: records from product liability lawsuits (63%), records of donations to political campaigns (53%), and driving records (52%). Interestingly, settlement records from product liability lawsuits, which garnered the greatest amount of support for unconditional access, are routinely sealed by courts.

A majority of respondents thought two types of government records should never be made available - property records reflecting prices paid for homes (54.3%) and the names of people who had served on juries (67.2%). In a culture which generally eschews public discussion of an individual's salary and economic worth, it is understandable that people would view disclosure of such information as an invasion of privacy. Ironically, property records are one of the most requested public documents. Many newspapers routinely identify the buyer, seller, and the price paid for a property when it changes hands.

The strongest consensus for blocking access to a public record was for disclosure of jurors' names. Absent a compelling reason, such as protecting juror safety, the names of people who serve on juries are ordinarily a matter of public record. The strong sentiment against disclosure is somewhat puzzling. If it was simply a matter of protecting privacy, one would expect the same response to emerge with attitudes about disclosure of driving records. Perhaps it involves worries about being contacted by meddlesome neighbors, disgruntled litigants, or fears of becoming a target of media coverage that shapes this attitude.

Table 2 reports the attitudes of the American public toward access to government records overall, and toward specific groups seeking government information. A large majority (81%) believes that making government records publicly available keeps the government honest. Notwithstanding the recognition of this checking function, 51% of respondents feel that this beneficial policy of openness also threatens personal privacy. Where government records specifically name an individual, there is strong support (86%) for granting access rights to the person named in the record.

Attitudes toward access vary depending on who is seeking the information. There is solid agreement (85%) that people working for law enforcement agencies need to have access to government records to do their jobs. But support for access begins to dwindle when respondents consider other entities: 49% think journalists need access to do their job; 47% agree that banks considering making a loan need access; and only 21% agree that credit card companies need access to do their jobs. It may be that people's attitudes about access are determined by the perceived credibility and motives of the requestor. The public holds substantially different attitudes about access for banks and credit card companies, but both provide similar financial services for consumers and are often part the same company. Perhaps the ubiquity of direct-mail solicitations for credit cards leads consumers to feel their privacy has been invaded.

When it comes to paying the cost of retrieving government records, a majority of the public agrees that the requestor should pay. There is a substantial difference, however, between the amount of agreement when the requestor is a business (70%) and when it is a private citizen seeking a record (53%). Interestingly, 29% of respondents strongly disagree with the idea that private citizens should ever have to pay for government records, while only 16% strongly disagree that businesses should ever have to pay.

To explore the data further, difference analyses were conducted on three of the attitude statements: whether making government records available keeps government honest; whether access to government records represents a threat to people's privacy; and whether journalists need access to public records to do their jobs. As shown in Table 3 and Table 4, attitudes about whether making government records available keeps government honest did not vary at the $p < .05$ level on any demographic or psychographic variable included in the study. Nor were differences found between groups on whether access to government records represents a threat to people's privacy, as shown in Table 5 and Table 6. Analyses of differences in attitudes about whether journalists need access to government records (Table 7 and Table 8) revealed only one statistically significant result: men were more likely than women to feel that journalists need access to government records to do their jobs. Overall, public attitudes toward access to government records appear remarkably homogeneous across conventional demographic and psychographic categories. Even by political orientation there were no significant differences, suggesting that access to government records is not an issue that breaks down along liberal-conservative lines.

Conclusions

The survey results show substantial public support for access to an array of government information. There is also overwhelming recognition that access to government information helps keep government honest. But, despite their liberal

attitudes toward openness, it appears that the American public is deeply concerned about the threat to individual privacy that may result from making certain government records publicly available. The public is prickly about which government records should be available, and it is disposed to condition access based on who is requesting the records.

The weakest support for public access in this study was found for the disclosure of jurors' names. Public identification of jurors is commonplace, but recent judicial trends and even legislative initiatives suggest a possible shift toward more privacy or even outright secrecy.[22] Such public sentiment may be understandable against the backdrop of the O.J. Simpson case, the Oklahoma Bombing case, and other high-profile trials. Nevertheless, the ability to identify jurors serving in routine cases is crucial to the fundamental openness of the judicial system.

From the perspective of access proponents, the most troubling aspect of the survey results was the tepid support for the role of the press in the access to information equation. The news media have long played the dominant role as government watch dog, recognition of which pre-dates the American Revolution. The news media - an amalgam of institutions from the elite newspapers and television networks to the supermarket tabloids - have come under intense scrutiny and criticism in recent years. But regardless of the public's perception of press credibility, the news media need to do a better job of informing the public about the importance of access to government documents and the role of the press in that process.

Finally, the results suggest that public attitudes toward access to government documents are complex phenomena. While public opinion regarding access seems exceptionally homogenous across demographic and psychographic variables, various motives may underlie the preference for disclosure in some cases and restrictions in others. Additional research is needed to uncover the various factors that shape public attitudes toward access.●

Sources:

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- [2] Meiklejohn, Alexander. *Free Speech and its Relation to Self-Government*. (Port Washington, N.Y.: Kennikat Press, 1948); Emerson, Thomas I. *The System of Freedom of Expression*. (N.Y.: Vintage Books, 1970); Blasi, Vincent. "The Checking Value in First Amendment Theory," 1977 *Am. B. Found. Res. J.* 521.
- [3] Stewart, Potter. "Or of the Press," 26 *Hastings L.Rev.* 631, 636 (1976); *Houchins v. KQED*, 438 U.S. 1 (1978).
- [4] *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969); *Branzburg v. Hayes*, 408 U.S. 665 (1972).
- [5] See e.g., *Fayette Co. v. Martin*, 279 Ky. 387, 396, S.W. 2d 838, 843 (1939); *State ex rel. Wellford v. Williams*, 110 Tenn. 549, 74 S.W. 948 (1903); *Clement v. Graham*, 78 Vt. 290 (1906). In some jurisdictions, courts have abandoned interest tests for access to public records. See *Burton v. Tuite*, 78 Mich. 363 (1889); *MacEwan v. Holm*, 226 Or. 27 (1961).
- [6] 5 U.S.C. sec. 1002 (1946).
- [7] 5 U.S.C. sec. 552 (1988).
- [8] See Comments, "Public Inspection of State and Municipal Executive Documents: Everybody, Practically Everything, Anytime, Except . . ." 45 *Fordham L.Rev.* 1105, 1107 (1977).
- [9] For example, Florida lawmakers added 17 exemptions to Florida's Public Records Law in its 1997-'98 legislative session. These included exemptions for private corporations running public hospitals and the names, addresses and telephone numbers of animal owners contained in rabies vaccination certificates. The rabies exemption was pushed by the state's Veterinary Association to protect client lists from direct marketers who sold pet care products cheaper than the local veterinarians. See Chance, Sandra F. "Chicken soup laws undermine the public trust." *The Brechner Report*. 22:4 (April, 1998); "Florida Legislature enacts several exemptions to access laws." *The Brechner Report*. 22:7 (July, 1998).
- [10] The Driver's License Protection Act of 1994 prohibited states from releasing certain information contained in DMV records. While the press and the public were not given access, an exemption was made for private detectives, tow-truck drivers, researchers, insurance companies, and other entities.
- [11] The survey was commissioned by the Coalition for Open Government and conducted by the Santa Monica-based research firm of Fairbank, Maslin, Maullin & Associates, in September, 1998. Survey sponsors included a number of press and First Amendment interest groups. See, Boxall, Bettina. "California and the West, Government secrecy seen as a problem, Poll: Majority of voters back release of more information, Many support strengthening public access laws." *Los Angeles Times*. October 25, 1998, at A3. Survey results are available at http://spj.org/foia/foi_poll/index.htm. Site visited

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- [16] Fancher, Michael R. "In the electronic age, personal rights and public access collide." *The Seattle Times*. December 7, 1997, at A23. News organizations are often rewarded specifically for addressing access issues. For example, the Brechner Center for Freedom of Information at the University of Florida annually bestows an award for coverage of access issues.
- [17] Blasi, Vincent. "The Checking Value in First Amendment Theory," 1997 *Am. B. Found. Res. J.* 521, 538. See Altschull, Herbert J. *Agent of Power: The Media and Public Policy* (2nd ed.). (White Plains: N.Y.: Longman, 1995); Carter, Douglass. *The Fourth Branch of Government*. (Boston: Houghton Mifflin, 1953).
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- [20] Select Phone CD-ROM. (Danvers, MA: ProCD, 1998.)
- [21] A middle category (e.g., "neither agree nor disagree") was not given as part of the response set. However, the questionnaire accommodated a middle response category if the respondent voluntarily gave such a response.
- [22] The state of Texas, for example, recently passed controversial legislation that shifted the presumption from openness to secrecy. Benjaminson, Wendy. "Shroud of Secrecy Increasingly Veils Trials in Texas." *Houston Chronicle*. March 13, 1994, at A1.