

Louisville Courier - Journal (KY)

December 14, 2003 Sunday

Public Access; Unlike Other States, Kentucky Keeps Online Court Records Private; Courts Weigh Convenience Against Concerns Over Privacy

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In Dayton, Ohio, Stephany Scott checks online court records from home to see if prospective suitors have a history of assault or other crimes. "I do it for all my girlfriends," she says.

In Florida's Manatee County, parents have checked on prospective nannies, landlords on potential tenants and homeowners on home-repair outfits, all through local court records available on the Internet.

"People save time and money on driving to the courthouse and parking, and we don't have to pull as many files," said Circuit Court Clerk R.B. "Chips" Shore.

In Iowa, as many as 250,000 times a day, people click on a statewide court database that allows them to check a case's status or see if an ex-spouse has made a child-support payment, in what Chief Justice Louis Lavorato describes as "a huge benefit to busy Iowans who cannot take time away from their jobs or families to travel to the nearest courthouse."

But in Kentucky, the state Supreme Court won't allow the public online access to court records.

Although Kentucky has a statewide court database whose stated purpose is to "provide easy and expeditious access to criminal and civil cases," the Supreme Court and its management arm, the Administrative Office of the Courts, cite concerns about identity theft and privacy in refusing to grant the public remote access to it.

The office says it is proceeding with caution because "worldwide release" of court information has resulted in "injuries to citizens and the courts."

"The Kentucky Court of Justice finds itself ... in the early stages of the information age," said Ed Crockett, who supervises the release of records as the Administrative Office of the Courts' manager of pretrial services.

“As we begin to move electronic access to a broader audience, we intend to serve the public interest without exposing our citizens to the consequences of recklessly providing public access without appropriate safeguards.”

Kentucky’s conservative approach comes as states and individual courts across the nation try to balance the right to remote access to records with concerns about putting addresses, uncorroborated child-abuse charges and other sensitive personal information on the Internet for all to see.

Just last month, Florida’s Supreme Court issued an order restricting electronic access to court records until a panel figures out how to remove Social Security numbers and other financial data that could lead to identity theft. The legislature in Florida – where the right to open public records is written into the state constitution – had ordered that every court document case be placed online by 2006.

Court records have long been freely available to anyone who goes to a courthouse and asks for them. But until the emergence of the Internet, they were protected by what court officials and others call “practical obscurity” – the time and energy it took to look them up.

Crime-victim groups and organizations that protect women, such as the Kentucky Domestic Violence Association, generally oppose making court information accessible over the Internet. “It’s true this information is public, but a stalker is less likely to go from courthouse to courthouse searching for it,” said Susan Smith Howley, director of public policy for the Washington-based National Center for Victims of Crime.

Yet other groups, including news organizations and citizen watchdog groups, say putting court records online increases the accountability of judges and prosecutors – and potentially, public trust.

“The courts have always leaned towards openness – this is simply taking it to the next step,” said Ari Schwartz, policy analyst for the Center for Democracy and Technology in Washington, which says its mission is to “promote democratic values and constitutional liberties in the digital age.”

States Differ on Data

Every state puts some court records online, according to the center, but the approaches vary.

Kentucky, for example, publishes court schedules online and makes a version of its database available to lawyers; the state Supreme Court provides information about its own cases, and its written opinions, online. In Ohio, clerks in Hamilton and Montgomery counties provide the full text of virtually every court document online.

In September, the federal courts, which already provided remote access to pleadings in civil and bankruptcy cases, decided to put criminal cases online after a study by the Federal Judicial

Center, the research arm for the federal courts, found no evidence that the practice had fueled identity theft.

“The bottom line is that no one has been harmed by it,” said David Sellers, a spokesman for the Administrative Office of the U.S. Courts in Washington.

Federal rules make lawyers responsible for removing personal information about litigants from pleadings.

In Indiana, a Supreme Court committee last month proposed a rule that would encourage courts to provide records to the public “from off-site and around the clock” while keeping addresses and phone numbers of victims and witnesses confidential. Kentucky has such a database, called CourtNet, but makes it accessible online only to law enforcement officers and attorneys – the latter, the Administrative Office of the Courts says, because they are officers of the court and can be disciplined for misuse.

The public can tap into the information only at publicly designated computers in county courthouses, and there, only get information about cases in the county where the terminal is located. Addresses of defendants are deleted from public terminals, meaning users often must have files pulled to make sure they have the right person.

Kentuckians Frustrated

The courts agency says it acted to protect privacy, but Gary DeWitt, president of Louisville-based Vericorp Inc., which screens job applicants for companies nationwide, said the agency overreacted so that now “it’s hard to keep your ‘Jim Jones’ straight.”

The office of Jefferson Circuit Clerk Tony Miller gets daily requests from the public for remote online access to court records but has to turn them down because the state courts agency prohibits it, said Debbie Michals, a spokeswoman for Miller’s office.

Sara McKinney, the Kentucky chairwoman for Mothers Against Drunk Driving, which is among those whose request has been rejected by the agency, said: “If we could spend more time with victims rather than running around from one county to the next getting records, it would certainly benefit victims and our mission.”

Journalists also say the refusal of the state courts to place data online is frustrating.

“Why should I have to drive to Pikeville to check out something that is a public record and that I could check on my computer from Louisville?” asked Shannon Ragland, editor of Kentucky Trial Court Review, which reports civil jury verdicts.

The courts agency contends that access to the database wouldn’t save journalists and others time because errors might occur when information is keyed into a computer; spokeswoman Leigh Anne Hiatt says the data must be cross-checked against paper records stored in courthouses.

But Jon Fleischaker, an attorney for the Kentucky Press Association and The Courier-Journal, said users – not the courts agency or Supreme Court – should decide how to use the data. The newspaper has unsuccessfully sought remote access to the database.

The courts agency itself uses the database for statewide background checks that it offers the public for a \$10 fee that is waived for youth groups, schools and government agencies. Last year it performed 631,342 checks, charging for about two-thirds of them and generating about \$2.4 million. The revenue is used to pay for about 60 employees who work around the clock doing nothing else, Hiatt said.

Crockett denied that the agency declines to provide statewide access to the database to protect its revenue from background checks; he said it does so because its principal mission is to help criminal justice agencies – and to protect individuals who could suffer if erroneous information was released about them, potentially costing them a job or a place to live.

Hiatt called the records-check program “one of the court system’s success stories,” noting that it is entirely self-supporting and that over the past four years, 400,000 requests were processed for free for schools, Big Brothers/Big Sisters and other groups.

Proponents of putting court records online say it saves money and time. Customers don’t have to stand in line at courthouse counters, and clerks don’t have to pull files, take them apart, make copies and reassemble them.

The Iowa Supreme Court, which launched its statewide system in January 2002, says it costs \$300,000 a year to operate, but that it expects the costs will be partially offset by fees from a related subscription service. Court clerks elsewhere say that initial costs for software and document scanners are balanced by reductions in personnel and overtime.

Multiple users can look at pleadings in the same case at the same time, clerks say, and the opportunity to mutilate or steal files is eliminated.

Remote access also allows disabled and elderly people to check court records from home, says Shore, the Manatee, Fla., clerk. “No one should be able to see a record just because they have the physical ability or time to make it down to the courthouse to look in a paper file,” he said.

Public Records

Although attorneys are the most frequent users, clerks such as Greg Hartmann, in Hamilton County, Ohio, said it would be unfair to restrict access to lawyers because the records belong to the public. (In Kentucky, the Supreme Court and courts agency control the electronic release of court records but in some states, policy is left to individual court clerks.)

The Reporters Committee for Freedom of the Press, an Arlington, Va., nonprofit advocacy group for journalists and the First Amendment, says putting court records online makes it easier for journalists – and other watchdog organizations – to see how courts across a state or the nation deal with important issues such as drunken driving and foster-care abuses.

“Electronic access ensures that the public and the news media can oversee how justice is administered like never before,” the organization says.

Jerome Cook, court administrator in Butler County, Ohio, said that court decided to put records online for the simple reason that, “if records are public, they should be as public as possible.”

But opponents say the personal nature of court records is why they shouldn’t be placed online – where nosy “pajama surfers” can read up on their neighbors.

The Providence, R.I.-based Privacy Journal says 15 types of information – including nude pictures of crime victims and litigants, as well as the names of eyewitnesses, victims and juveniles – shouldn’t be made available on the Internet. Publisher Robert Ellis Smith said such restrictions can be justified because First Amendment rights are preserved through the continued availability of paper records at the courthouse.

The Florida Supreme Court, imposing its temporary moratorium on electronic records last month, noted frequent complaints about the electronic distribution of divorce records, which often contain information about the private lives of spouses and their children, unfounded claims of wrongdoing and detailed information about financial assets. Other states, including Ohio, New York, Arizona, Wisconsin and Texas, have task forces studying privacy concerns.

Opponents of remote access also say they’re worried that personal data from court Web sites will result in stalking or other crimes, especially identity theft, the fastest -growing white-collar crime in the country.

They point to the case of Jim Moehring, the general manager of Cincinnati’s ice hockey arena, who used Hamilton County court’s Web site to check out potential employees but was bitten by the same system. Someone used the site to pull Moehring’s Social Security number and other details from a 1996 traffic ticket, opening seven credit cards in his name and charging \$11,000.

But court clerks and law enforcement officers who investigate identity theft say incidents linked to electronic court data are rare.

Most identity crimes are perpetrated using information from stolen wallets or mail or data purloined by dishonest employees at mortgage companies or retail stores, police say.

In Florida, which has led the nation in providing court records online (about a dozen of 67 court clerks make some records available by remote access), the supervisors of the Florida Department of Law Enforcement’s economic crime units said they knew of no offenses linked to personal information stolen online.

In Ohio, where about 35 courts offer some information online, a spokesman for the state Supreme Court said he wasn’t aware of any criminal offenses attributed to it.

Neighborhood groups in Dayton also consult court records online to track crimes in their areas, said Court Clerk Dan Foley.

Scott, 42, the Dayton resident who says she does computer checks on prospective suitors, said in an interview that she also recently used the court database to check a carpet cleaner before she let him in her home.

In an unsolicited comment to the clerk's office about its online site, Scott said by e-mail: "Keep up the good work of keeping the community safe."

State won't grant public online access to court records.

Other Records Online

The National Center for State Courts provides a list of online court sites at:

www.ncsconline.org/D_KIS/info_court_web_sites.html#State

The Center for Democracy and Technology provides another list at:

www.cdt.org/publications/020821courtreords.shtml

Federal records may be obtained through PACER – Public Access to Court Electronic Records, which provides case and docket information from district, bankruptcy and appellate courts. Users are charged 7 cents a page and must register at www.pacer.psc.uscourts.gov/

RECORDS ONLINE

The Kentucky courts provide online access to:

- Kentucky Supreme Court dockets and case information
- Kentucky Supreme Court and Court of Appeals opinions
- Daily trial court schedules by county.
- The information is available at www.kycourts.net/ Click "Online Services."
- Also available on the site are the names and phone numbers of all Kentucky judges and clerks, as well as a list of domestic-violence treatment providers.
- Other states
- Courts in all 50 states provide information online, though some charge a fee.

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