

Records set to go online, but access undecided

Courts weighing privacy, public right to know

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- *Critics say putting too much information out in the open could be dangerous for crime victims.*

Five years from now, you might be able to file a small claims case against your contractor over the Internet - and your neighbor might be able to read your divorce records online.

The state's 65 trial courts are about to start putting all their records on a vast computer network that will let judges, lawyers and the police find cases or file motions with the click of a mouse.

But Internet access for the public could be years away, because privacy advocates fear it would turn the system into a malevolent tool for stalkers, snoops and identity thieves.

So the state Supreme Court is moving cautiously in developing an electronic access policy, weighing privacy interests against constitutional guarantees of open government.

The debate revolves around ease of access. While most state court records are public on paper, they are filed away at scattered courthouses, making them "practically obscure," in the words of the U.S. Supreme Court.

Cindy Southworth of the National Network to End Domestic Violence predicts criminals will use online court records ranging from traffic accidents to legal name changes to track down battered women, sex-crime victims and witnesses in hiding.

"Women will die," Southworth said. "I have absolute faith that stalkers and batterers will find their victims because of these records and they will kill them."

Access advocates say such claims are overblown, and they fear such rhetoric will persuade legislators and courts to roll back decades of progress in making the courts more open.

"Particularly in New Hampshire, the constitution calls for the greatest possible public access, and to me the advent of the electronic age should mean increased public access," said Gregory Sullivan, a Manchester lawyer who teaches First Amendment law and represents the *Union Leader*.

Sullivan argues the courts can safeguard sensitive information while making records more accessible to all, especially victims, the elderly and the disabled.

Striking that balance requires good court rules and software - preferably in that order, says Martha Wade Steketee, co-author of guidelines on electronic access for state courts.

"The rules should drive what the software can do, so there need to be rules," Steketee said.

Donald Goodnow, director of the Administrative Office of the Courts, says the software his office selects will

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accommodate whatever rules the justices adopt.

Court critic Theo Kamasinski is dubious. He notes the last time the courts installed software without seeking public input, they failed to provide a way for clerks to "tag" confidential cases electronically. As a result, trial courts have refused public access to all their computerized dockets for nearly a decade.

That is "offensive to the established principle that everything that goes on in the courts belongs to the people," Kamasinski said.

The justices are seeking advice this time around. Goodnow and his staff met with members of the media three years ago before drawing up specifications for the new software.

The court also plans to convene representatives from law enforcement, the Legislature, defense lawyers, victim advocates, businesses that "mine" court records and the media to help draft a formal access policy.

Meanwhile, the courts hope to begin installing the software for their own use sometime next year, Goodnow said.

Thomas Kearney is executive editor of the *Keene Sentinel*, which won a state Supreme Court decision in 1992 affirming public access to court records. Kearney says a searchable database would help reporters and the public root out incompetence and corruption.

"If you want to know that Judge Y is reversed (on appeal) 40 percent of the time, the computer would be a great tool to track that," Kearney said.

Others argue that too much information could be harmful.

"If you've done your time, in this society you're supposed to be given another chance," said Tim Remsburg of Nashua. Remsburg has advocated for stronger regulation of Internet information brokers since his stepdaughter, Amy Boyer, was killed in 1999 by a man who used one to get her Social Security number and work address.

Jonathan Zittrain, director of the Berkman Center for Internet and Privacy at Harvard Law School, says it makes sense to restrict Internet access to some information while keeping paper records as open as they are now - essentially creating two levels of access.

"Creating a middle zone for some information that would be public, but not promiscuously public, is not a bad idea," Zittrain said.

He says it's a "no-brainer" that Social Security numbers, bank account numbers and addresses of battered women should not be published online.

Other information falls into a gray area that states must debate carefully, he says. Divorce records, for example, often contain allegations of child abuse, adultery or domestic violence.

Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, says courts can require information that is deemed private to be filed on separate, paper forms that are sealed at the courthouse and online. She also argues that people give up some expectations of privacy when they use the courts.

"We believe ideally that information that is in a court file should be available whether it is in paper form or electronic form," Dalglish said.

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