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Electronic Court Filings Are a Privacy Nightmare

The private health and financial information of people involved in lawsuits is far too easy to search and steal.

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Most courts of law have finally entered the computer age. Until recently, every case produced a mountain of papers that were eventually physically archived deep in the subterranean bowels of a courthouse. Now many courts require lawsuits to be filed online, where court papers are archived on publicly accessible websites. It's all very convenient, but the convenience comes with a downside: Sensitive personal information and documents—including medical, psychiatric and financial records—are forever accessible to anyone with access to the internet.

Every court system has its own website. Most make it easy to determine who has been a party to a lawsuit. Searching by name will often lead directly to case dockets and papers that can be easily opened and downloaded. These records are typically unencrypted. They aren't protected by modern data safeguards like two-factor authentication, such as you might find on a bank website. Accessing sensitive information filed as part of a case generally requires no permission or notice to the court, parties or attorneys. At most, the searcher may have to prove that he isn't a robot by answering captcha questions.

Before electronic court filing, confidentiality was of little concern. There was no central or organized index of files, other than logs—often handwritten—of cases filed in a particular courthouse. Those lists could be viewed only by visiting the clerk’s office for the right court in the right county. Once physically present in the building, a researcher would have to do a line-by-line search of case filings in dozens, if not hundreds, of massive logbooks. Since these were logged in chronological order, there was no easy way to locate someone’s lawsuits. If a case was identified, the physical file, assuming it wasn’t destroyed or misfiled, would have to be located and retrieved by a court clerk. It would have to be reviewed in the courthouse during business hours. The inefficiency of that system and magnitude of the effort necessary to locate a case virtually assured privacy.

Courts considered the filing of a personal-injury or legal malpractice lawsuit an implicit waiver of legal confidentiality, giving defendants the right to obtain and review records that would normally be protected by the Health Insurance Portability and Accountability Act and other data-privacy regulations. While the reason for giving defendants access to plaintiffs’ confidential records hasn’t changed, the implicit protection of privacy that existed before electronic court filing has been totally lost. Instead of adopting rules to protect the confidentiality of highly personal records, courts have done the opposite by requiring virtually all court papers to be filed electronically. (Courts do make exceptions for certain limited categories of cases, typically those involving domestic disputes, and mandate redaction of Social Security numbers, dates of birth, account numbers and the names of minors.)

Moreover, there’s a double standard at work. Courts frequently grant businesses the right to protect trade secrets and settlement terms from public view. They do this even when the public has a legitimate interest in seeing such information. Yet, a person’s intimate medical and financial confidences, which are of no legitimate interest to anyone other than the parties to the lawsuit, are mostly left unprotected by the courts.

Like smoke let out of a bottle, a person’s privacy can’t be restored after it’s been violated. Court-system websites are becoming treasure troves of confidential information. While the benefits of electronic court filing are substantial, they shouldn’t come at the cost of privacy. If court administrators and judges won’t protect the data under their care, the people’s elected representatives must step in.

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