

*Computer Matching and Merging of
Identifiable Information in Wisconsin State
Government*

JULY 1997

The Emerging Threat to Privacy

The implications of emerging information technologies on personal and data privacy have become a major concern in the 1990s. As far back as 1977, the U.S. Privacy Protection Study Commission cautioned against the gradual erosion of individual liberties "through the automation, integration and interconnection of many small, separate record-keeping systems, each of which alone may seem innocuous, even benevolent, and wholly justifiable." That statement has proved prophetic, as increasingly sophisticated computer applications enable the inexpensive and routine assembly of virtual "data dossiers" that at their worst can jeopardize the employability and insurability of unsuspecting citizens and at their most benign rob us all of accustomed expectations of privacy.

The Response: Wisconsin's Data Privacy Project

Given these developments, the ACLU of Wisconsin, in 1995, initiated a Data Privacy Project under the direction of Carole Doepfers, the former Privacy Advocate for the State of Wisconsin. The primary focus of the Project is to understand the growth of data-gathering efforts as well as the role of government in the consolidation, integration and release of identifiable data to third parties. The secondary use of personal information, as well as its release or sale without provider consent, are issues that thread their way through most, if not all, of the Project's initiatives. The objective of the Project is to demonstrate that users of information about other people's finances, driving habits, life styles, sensitive health conditions (not to mention their Social Security numbers) must operate in the open and adhere to high standards of ethical information practices.

Data Matching and Merging Programs: An Overview

Increasingly over the past 30 years the comparison and integration of separate databases have grown at an unchecked pace. Despite concerns that such efforts violate individual privacy, the expansion of data-sharing arrangements is not difficult to understand. Matching and merging entire databases has become a quick and efficient way to verify a person's identity, detect fraud, track benefit recipients and assist in law enforcement.

Concern about the advent of intrusive technologies led the Wisconsin State Legislature in the early 1990s to enact several privacy protections into law.

One provision in particular, Sec. 19.69, was of critical importance to the ACLU Project. This section prohibits any government authority from using personally identifiable information in a computer matching program unless the governmental unit has specified in writing all of the following:

- the purpose and legal authority for the matching program
- a justification for the program and anticipated results
- a description of the information that will be matched.

The law requires that copies of such specifications be filed with the state's Public Records Board (formerly known as the Public Records and Forms Board) in the Department of Administration.

Another statutory requirement enacted during the same period also proved invaluable. In response to a legislative directive, the Public Records Board published in 1994 the first of two editions of a document entitled the Registry of Record Series. The purpose of this document is to insure that state agencies maintain no secret files on individual citizens. Among other things, the Registry identifies all government records series containing personal information, as defined in Sec. 19.62(5). In addition, the Registry is designed to help individuals access their own records in order to review, correct or update the personal information contained in those files.

Survey of Current Practices

Using rights of access provided by Wisconsin's Open Records Act, Carol Doeppers, Director of the Wisconsin ACLU's Data Privacy Project, asked agency officials to identify the number, titled and nature of all data matching and/or merging activities involving personal information. The Registry provided a starting point for this examination.

Intentionally, Doeppers's written requests contained no statutory references. This was because Sec. 19.62 of Wisconsin law limits the definition of a "computer matching program" to a computer comparison which is used to establish or verify an individual's eligibility for any right, privilege or benefit or to recoup payment or delinquent debts under a government program. For the purposes of the Project, that statutory definition was too narrow.

Survey Results

Forty state agencies and public educational institutions responded to requests for information regarding computer matching and merging programs. Of that number, 24 reported no matching and merging programs. The balance identified more than 140 examples where personally identifiable databases were compared and integrated with similar files from other sources.

Five of the state's largest agencies (including their bureaucratic subdivisions) comprise the bulk of data matching and merging activities in our state.

The following list summarizes the major players who request data interfaces and the number of merging and matching programs they maintain:

Agency	Matching Programs
Department of Health & Family Services/DHFS	46

(formerly Department of Health & Social Services)	
Department of Workforce Development/DWD (formerly the Department of Industry, Labor & Human Relations/DILHR)	41
Department of Revenue/DOR (Including the Lottery Division)	20
Department of Transportation/DOT	5
Office of the Insurance Commissioner/OIC (Including the Office of Health Care Information)	9

The above summary merely describes records custodians who initiate data exchanges. Therefore, the number of programs reflected in the right column may be somewhat different from agency responses. Also it should be noted that some names of departments and their subunits have been changed as a result of last summer's government reorganization.

Details of Agency Activities

Department of Health and Family Services/DHFS

The majority of the computer matching and merging programs conducted by the DHFS originates from four areas: the CARES program (Client Assistance for Reemployment and Economic Support), the "KIDS Project" (Kids Information Data System), the Division of Vocational Rehabilitation and the Division of Health.

The first two programs (CARES and KIDS) exchange personal information contained in their own record-keeping systems with files maintained by the IRS, U.S. Postal Service and private businesses such as telephone companies and credit bureaus. They also interface databases with two other states, Indiana and Illinois.

Examples of the Division of Vocational Rehabilitation's data-sharing activities involve exchanges with workman's compensation files and the Social Security Administration. Originally, the Division of Health reported they were involved in 28 matching and merging programs but later stated that only 4 involved personally identifiable information. Here again, personal data were either compared or integrated with databases maintained by the CARES and "KIDS" programs as well as with the Office of Health Care Information and the Social Security Administration.

The Department of Workforce Development/DWD

The Department of Workforce Development also exchanges personal information widely. For instance, claims data for workman's compensation (WC) and unemployment insurance (UI) are interfaced with databases from HUD, the Social Security Administration, the IRS, the Louisiana Department of Labor and the Florida Internet Hub, as well as from the for-profit company called Electronic Data Systems (EDS).

Department of Revenue/DOR

Most of the Department of Revenue's data sharing programs focus on identifying tax delinquents, locating non-filers and collecting debts. To accomplish these objectives, tax information may be verified against IRS records and lists of lottery winners, lottery retailers, parents delinquent in their child support ("KIDS"), unemployment compensation claimants and deceased taxpayers (whose deaths are recorded in the Center for Vital Statistics located within the DHFS).

Department of Transportation/DOT

No information in state government is in higher demand than that generated by motor vehicle records. For example, the Division of Motor Vehicles/DMV initiates data exchanges with the National Driver Registry, the Commercial Driver License Information System and Wisconsin's Division of Health. Similarly, DMV provides information from its massive driver and/or vehicle registration databases to the Department of Revenue (for tax reporting), the "KIDS" program (to locate "dead beat" parents), CARES Programs (to verify benefit eligibility), and to the Vocational Technical Educational System (for longitudinal studies on VTAE graduates). Other bureaus in DOT are involved in computer interfaces with the Federal Aeronautics Administration (FAA) and the Office of Health Care Information.

Office of the Insurance Commissioner/OIC

Finally, the Office of the Insurance Commissioner/OIC confirmed that they assure the competency and trustworthiness of prospective insurance agents by comparing the names of license applicants with a nationwide database maintained by the National Association of Insurance Commissioners/NAIC.

Almost all other data exchanges, however, originate in the department's Office of Health Care Information/OHCI. According to reports provided by OHCI officials, some health care information is shared for epidemiological research and for unnamed linkage purposes. Recipients of health data include the Center for Health Statistics and the Bureau of Public Health, both in the Department of Family and Family Services.

Implications of Survey Results

Survey results revealed two patterns of particular interest. The first illuminates the extraordinary national commitment to locate non-custodial parents delinquent in child support payments. No other governmental program compares with the breadth and depth

of authority that is granted to the KIDS Project to locate "dead beat parents." Laws enacted at both the state and federal levels permit the KIDS Information Data System to interface with a myriad of other data repositories, ranging from major credit bureaus to the IRS and other government agencies dealing with health, recreation, criminal justice and motor vehicle licensing.

Locating "dead beats" is, in itself, a sound policy; however, significant privacy concerns would be raised if such extraordinary data sharing authority enjoyed by the KIDS Project became routine across the broad spectrum of government. Or if the databases assembled by the KIDS Project are shared or accessed for other purposes, a situation that is now possible at the flick of a key stroke.

A second pattern focuses on the number of private businesses that are interested in joining with government to compare and integrate databases. Heading that list are well-known national data brokers such as TRW, Equivax, Trans Union and Metro Mail. Telephone companies and private sector data processors are also mentioned as being providers or recipients of commingled personal information.

It is important to note that the survey reported here deals only with inter- and intra-government data exchanges. It does not even begin to take up the privacy implications of commercial vendors who obtain entire databases under Wisconsin's Open Records Act and further customize, link and sell the information for their own private gain.

Challenges, Inadequacies and Inconsistencies

The complexity and clarity of study results were complicated by the massive government reorganization which began in July 1996 and continues to the present time.¹

Another problem arose from responses that were either incomplete or inconclusive. For example, the University of Wisconsin System admitted that individual campuses may indeed be exchanging personal information without Central Administration being informed. To date, chancellors throughout the UW System have not been surveyed. Also it should be noted that some governmental entities were not surveyed, including the court system, the legislature and its service agencies.

Some agencies provided partial responses. For instance, the Department of Health and Family Services/DHFS did not mention any possible data sharing programs being conducted by institutions under their jurisdiction, such as Mendota and Winnebago Mental Health Institutes, Central Wisconsin Center, Ethan Allan and Lincoln School.

Some agencies claimed to be exempt from the Project's reporting request all together.

¹ The government reorganization mandated in the 1994 state biennial budget resulted in personnel, job title and address changes. In some cases departments were assigned new names and responsibilities. In other cases bureaus and sub-units were transferred to different authorities.

The Department of Corrections argued that although information regarding juveniles was indeed cross matched with the U.S. Bureau of the Census and Social Security Administration, these data included only an ID number (rather than Social Security number) and thus were not considered to be personally identifiable as defined by law.

In some instances agency officials rationalized that their data sharing activities involved paper records (at least in part), and as such were exempt from any reporting obligations.

Two agencies contended they had no way of knowing whether tapes released under the Open Records Act were subsequently customized and integrated with other identifiable databases by the recipient.

The state Justice Department/DOJ argued that the agency is not engaged in any data matching or merging activities. Although offender information is readily available to third parties from the National Crime Information Center/NCIC and the Crime Information Bureau/CIB, department officials felt such computer access activities fell outside the statutory definition of a computer matching program.

In a letter dated August 6, 1996, the DOJ reiterated that a computer matching program, as defined in Sec. 19.62 Wis. Stats., is limited to an electronic comparison used to verify an individual's eligibility for any right, privilege or benefit or to recoup moneys under government programs.

However, the Data Privacy Project's objectives and the tenor of its reporting requests went beyond this narrow statutory definition of a computer match. Moreover, several other agencies considered their cross-check of names with the NCIC and CIB to be a bona fide data interface falling within the spirit, if not the letter, of the Project's mission. Nevertheless, the project director chose not to challenge this legal interpretation and as such, disregarded all data sharing reports associated with either the CIB/TIME system or NCIC.

Contracts to Match and/or Merge Identifiable Data

In the early 1990s, several privacy and accountability safeguards were enacted into law. One such protection, Sec. 19.60, requires any governmental authority that uses personally identifiable information in a computer matching program to specify in writing all of the following:

- the purpose and legal authority for the matching program
- the justification for the program and its anticipated results
- a description of the information that will be matched.

Relying on this important provision, the Data Privacy Project solicited copies of formal Data Sharing Agreements or Memoranda of Understanding (MOU) from select agencies. Judging from the samples received to date, such contracts, for the most part, do indeed

describe and justify information exchanges and recognize the responsibility for data security and confidentiality protections.

In a few instances, however, agency officials admitted that no matching specifications were ever drafted. Perhaps this represented an oversight, or maybe the data exchange was negotiated before the above-mentioned reporting requirement was enacted into law. Occasionally, was no explanation offered for the lack of any written binding agreement.

One example involved the KIDS Project, which claimed to be exempt from any written specifications guiding their computer interface of parents delinquent in child support payments with databases maintained by commercial interests. Officials argued that they were exempt by federal law from the need to obtain contracts. Whether legally required or not, it remains troubling that KIDS Project officials did not accept the wisdom of having written guidelines that spell out the details and ethical practices associated with their data sharing arrangements.

To date, the following agencies have, upon request, provided copies of Agreements or Memos of Understanding (MOUs) describing their interagency data exchanges:

Custodial Agency	Data Provider
Dept. of Workforce Development/DWD (formerly DILHR)	Dept. of Revenue
Dept. of Workforce Development/DWD (formerly DILHR)	Division of Vocational Rehabilitation/DWD (formerly housed in DHSS)
Dept. of Workforce Development/DWD (formerly DILHR)	Milwaukee County Employment Service
Dept. of Workforce Development/DWD (formerly DILHR)	Florida Internet Hub Crossmatch
Dept. of Regulation/Licensing	Dept. of Revenue/DOR
Office of Health Care Information (Insurance Commissioner's Office)	Division of Health in DHFS (formerly DHSS)
Wisconsin Technical College System	Dept. of Transportation
Wisconsin Technical College System	Division of Economic Support in DHFS (formerly DHSS)
Dept. of Natural Resources	KIDS Project

	(now in DWD; formerly in DHSS)
Dept. of Employee Trust Funds	Center for Health Statistics in DHFS (formerly DHSS)
Dept. of Workforce Development (formerly DILHR)	U.S. Internal Revenue Service
Div. of Vocational Rehabilitation (now in DWD; formerly in DHSS)	Dept. of Public Instruction

Conclusions

This survey represents a first step toward understanding the nature and extent of computerized matching and merging by Wisconsin state agencies. The study did not attempt to assess the extent of similar activities at local levels of government or in the private sector. But it does suggest that a broader examination should be undertaken in the near future.

Despite the potential negative impact on information privacy, computer matching and merging has been institutionalized government-wide. Moreover, there seems to be little, if any, political or consumer ground swell to limit the use of technology to collect child support, locate tax delinquents, track benefit recipients and verify identities largely through Social Security numbers.

The Data Privacy Project identified 22 different government entities engaged in over 140 data matching and merging programs. This represents a significant increase over a previous survey (though still incomplete) that was prepared in 1994. While the Project may not have captured all data exchanges being conducted in the state bureaucracy, it does illuminate how the demarcation line between separate record-keeping systems is being blurred.

Two things are obvious: Government information is in heavy demand, and technology is changing its character. Large-scale databases are being interfaced with increasing frequency between state agencies; between state agencies and different levels of government; and between state agencies and private sector businesses. To a large degree, citizens providing the information are unaware how their data are being used for secondary purposes and do not consent to its release or sale.

It is critical that the public understand the capabilities of emerging information technologies and the incentives driving large-scale organizations to consolidate and centralize entire record-keeping systems. This is important because data-commingled repositories create detailed personal profiles that can electronically follow a person throughout his/her life. When such "data dossiers" are released or sold without notice or consent, it can harm an individual's employability, insurability and good reputation.

If the government (and the private sector) continues to gather, integrate and share data on citizens' finances, driving and purchasing habits, life styles, genetic make-up and sensitive health conditions (not to mention their Social Security numbers), it is imperative that these activities be conducted in an open and accountable manner. That is why the Governor's current budget proposals raise such concerns.

The late Senator Sam Ervin put it best at the time of the Watergate Hearings in the 1970s:

"These new sciences have accorded those who control government increased power to discover and record immutably the activities, thoughts, and philosophy of an individual at any given moment of life. That picture of the person is recorded forever, no matter how the person may change as time goes on. Every person's past thus becomes an inescapable part of his present and future. . . . Unless new controls are enacted, new legislative remedies are provided and unless federal officials can be persuaded to exercise more political self control, this country will not reap the blessings of man's creative spirit which is reflected in computer technology."