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Secrecy in Death Records: A Call to Action

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Abstract

Legal access to death certificates varies widely from state to state. Because death records are crucial to in-depth journalistic reporting, we examined laws related to data access across the United States to determine how possible such reporting would be in each state under current laws. In addition to conducting a survey of state legislation on death certificates, we also conducted a meta-analysis of state legislative history related to these records, sought stories that have relied on death records, and interviewed the reporters who wrote some of those stories. We found that state laws could be categorized in three ways: open access, partial access and closed or very limited access. Only 12 of 50 states were found to have laws that could be considered “open.” We propose solutions and call for actions from key stakeholders to change these laws.

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Introduction

As fallout from the current global pandemic dominates headlines and chyrons around the world, one thing is clear: The public needs better, more accurate information, not only about death tolls, but also about the individuals who died.

A lack of access to death records has created a clear public accountability problem: dozens of uncounted deaths from the Flint water crisis (Childress, 2019), possibly hundreds of thousands of unidentified COVID-19 deaths nationally (Pappas, 2020), and hundreds of hurricane-related deaths that went uncounted (Mayo, 2018). These deaths – and likely thousands of others – were only linked to a public health crisis when journalists were allowed access to death records.

In the current COVID-19 crisis, deaths are inconsistently counted from state to state and county to county (Jones and Kamp, 2020), making accurate numbers elusive. The resulting chaos has stymied public health responses to the crisis and has hindered media efforts to combat politicized and largely false narratives about the pandemic. And as protests against racism and police brutality sweep the nation, questions about official accounts of police killings have highlighted the need for public access to death records (Crawford-Roberts et al., 2020).

Death records are crucial to reporting on these urgent crises. But they are also key data sources for journalists covering a wide range of issues, from maternal deaths (Kelly, Schnaars, & Young, 2019) to elder suicide (Bailey & Aleccia, 2019). With the help of these records, journalists have discovered a correlation between gun ownership and suicide rates (Duff-Brown, 2020), uncovered large-scale medical error at major hospitals (Gabler, 2019), and pointed out missing data in states' COVID-19 death tallies (Jones & Kamp, 2020).

Despite the usefulness of death records for studying public health and holding governments accountable, most states have laws restricting public access to death certificates. Proponents of closed laws often argue that releasing such data could compromise individual privacy or lead to identity theft (Boles, 2012). Recently, the leader of the National Association for Public Health Statistics and Information Systems, an organization that previously crafted laws seeking to restrict access to death records, said that she did not believe such a risk existed. Still, even in states with open death records laws, journalists often run into practical problems, such as inaccessible paper records or prohibitive costs. And in many states, records are not public until 10 to 75 years after the person's death.

What are the history and current status of, and potential solutions to, the issue of death records availability? In this research, we will examine the problem by evaluating who can access death records and how those records can be used for stories.

Methodology

In gathering information for this study, we conducted an in-depth survey of state legislation on death certificates, including who is (and who is not) able to access death certificates and death records databases in each of the 50 United States. We determined whether state laws were written to require certain researcher criteria, thereby stopping journalists from accessing the information, and which states used standardized model acts to craft laws. We also conducted a meta-analysis of state legislative history related to these records to determine how they had changed over time, and more importantly, why those changes were enacted. We also sought to identify stakeholders pushing for either increased or decreased access. After examining all this, we categorized state laws into three groups: open access, partial access and closed or very limited access.

Rather than relying solely on the laws as written, we also wanted to know how these laws practically affect journalism in each state. We found stories in states with all different kinds of laws and, through those stories, were more easily able to determine whether access to records or lack thereof made journalistic research in those states possible or impossible – or, at least, more or less complete. We also interviewed several investigative journalists who have worked with death records data either in specific states or across the country to gain insight into their experiences.

History of state legislation

Beginning mostly in the 1960s and '70s, states have introduced ever-more restrictive legislation on public access to death records in the name of protecting privacy and safeguarding citizens against identity fraud (Boles, 2012). Many of these laws extended the wait period after a death before the certificate became public and limited accessibility to certain family members or legal representatives. Genealogical societies and journalists have fought to reduce hold periods on death records, reduce restrictions on who can access these records, and urge states to release more detailed information (Meisels Allen, Alpert, & Laxer, 2014). Those in favor of increased access argue that public access to death records can, among other things, prevent identity theft, enable relatives to access information about their loved ones, and increase government transparency and accountability.

There are three general categories of state laws regarding death certificates, identified by Boles in his 2012 paper on the topic, in which he also calls death records laws “haphazardly formed, significantly overbroad, and loaded with unintended consequences” (Boles, 2012). Twelve states have open laws, allowing virtually any member of the public to request death certificates without a holding period after the death. Five states have partially open records. In some cases, this means that death certificates are public but that some information, such as cause of death, may be withheld. In other cases, death certificates may be closed but other records based on death certificates, such as a list of names, dates, and places of death, may be public. The remaining 33 states have closed death certificate laws. In many of these states, records become available after a certain holding period, ranging from 10 to 75 years after the date of death. Of course, this renders the records of little use to journalists, who almost always rely on recent data. Some states with partially closed or closed records allow for research agreements, which the state can approve, but which usually require conditions (such as confidentiality and a limited research team) that may hinder journalists.

Open access states

Twelve states have open access laws related to death records:

California	Minnesota
Connecticut	Montana
Georgia	Nebraska
North Carolina	Ohio
Massachusetts	South Dakota
Michigan	Vermont

These states allow any member of the public to request death certificates, although some require proof of direct interest – such as a familial or legal relationship with the deceased – to access a certified copy of the document.

Journalists have used records in these states to report on a variety of topics of interest to the public, including the potential for rushed procurement of donor organs to upend death investigations (Petersen, 2019) and increased inmate deaths in county jails because of poor medical care (Hargarten, 2019).

Wall Street Journal reporters Coulter Jones and Jon Kamp used death records in Michigan to determine that the state was likely missing early coronavirus deaths (2020). Jones said he had to sign a “user agreement” with the state’s vital records department but was able to get all the information he requested very quickly. But his initial story idea – to do a similar report for COVID-19 cases across the country – was stymied by his inability to obtain records in dozens of states with closed access laws. He said relying on CDC data can only take a reporter so far, which is why he chose to focus his story on a state that was willing to give him records. He likened daily counts from the CDC to “exit polls” and death records as “the actual ballot counts” (C. Jones, personal communication, July 13, 2020).

“Once you have those records, you can ask people on the ground – real people who are being affected and may see things that we’re not seeing,” Jones said. “Without the death certificates, it’s hard to talk with any specificity about what’s happening.”

Likewise, in a PBS *Frontline* investigation of drinkable water issues in Flint, Michigan, reporter Sarah Childress used death records in conjunction with an independent analysis by epidemiologists to hold the government accountable for having underreported cases of Legionnaire’s disease (2019) in the now-infamous city.

But laws, no matter how openly written, do not guarantee access to records. In North Carolina, a state lauded for offering free access to its death records, WRAL-TV reporter Tyler Dukes ran into an old-fashioned problem while looking for COVID-related deaths: The state keeps all its records on paper, meaning the information is only available months after a death has occurred (T. Dukes, personal communication, July 22, 2020).

“Accessing this data is a bit of a problem in North Carolina because we’re still in the dark ages when it comes to filing death data to health authorities,” Dukes said. Dukes’ station partnered with news organizations across the state to send reporters in person to every county records office in an attempt to get the most updated information possible, resulting in a watchdog story showing that many people in the state were dying with symptoms like those present in COVID-19 cases (NC Watchdog Reporting Network, 2020).

Connecticut, too, processes death records using a paper system that makes obtaining a comprehensive dataset in a timely fashion more difficult (and sometimes impossible) for journalists.

Dukes also said coroners in some counties were less cooperative than in others: “These are public records in North Carolina, it’s a well-established law, but some registers of deeds are really cautious about how they release those records” (T. Dukes, personal communications, July 22, 2020). He said some counties released records only in person at a public office, a particular issue during a pandemic response that relies on limited face-to-face interaction. In the end, Dukes’ collaborative story was published with a note questioning the complete veracity of the records and pointing to denial of access.

Partial access states

Five states offer partial public access to death certificates or data derived from the certificates:

- Florida
- Indiana
- North Dakota
- Tennessee
- Wisconsin

Florida, for instance, offers public access to death certificates, but the cause of death portion is considered confidential (Florida Senate, 2015). In Wisconsin, individuals who are not deemed to have a direct familial or legal relationship to the deceased can order a “Fact of Death” certificate that contains demographic information, but not manner of death, cause of death, or final disposition (Wisconsin Department of Health Services, 2020).

In these states, some reporters concentrate their stories on what they can access, rather than trying to fight for what they can’t access. In Florida, where cause of death is confidential, *Tampa Bay Times* reporter Paul Guzzo has used death records for stories on historical grave locations. Through death records searches and working with archaeologists, he was able to show that hundreds of black former Tampa Bay residents were buried in a long-forgotten, segregation-era cemetery that had since been built over with businesses and public housing (Guzzo, 2019). Because he didn’t need to rely on cause of death information, the death records available were of great use to him. He said he found the death records to be very easily accessible through an online database (P. Guzzo, personal communications, July 13, 2020).

Again, in these states, more seems to depend on the laws’ interpretation by officials than on the text of the laws themselves. *New York Times* investigative reporter Ellen Gabler, who previously worked for the *Milwaukee Journal Sentinel*, said she had difficulty getting information from a medical examiner in one Wisconsin county, while a medical examiner’s office in another county was known to routinely hand over public records (E. Gabler, personal communications, July 14, 2020).

Closed access states

The remaining 33 states have heavy restrictions on access to death certificates, including Washington, in which death certificate access will be increasingly restricted because of new legislation effective as of January 2021 (Washington Department of Health, 2020). Many closed-access states institute hold periods (in which records become public for a certain period following the date of death) and/or direct-interest laws that only permit death certificates to be released to people with a direct interest in the information – usually certain family members, legal representatives, or individuals who need the records to claim property.

Hold periods are generally justified through concerns over identity theft and privacy (as well as loss of revenue for vital records departments). A 50-year hold period for death certificates is written into the current version of the Model State Vital Statistics Act drafted by the Department of Health and Human Services (Centers for Disease Control and Prevention, 2011), which is used as a template for many states’ legislation on vital records. Hold periods range in length from 10 years in Maryland to 75 years in Iowa but are clustered around 50 years. When states have

attempted to extend their hold periods, genealogical societies and press societies have fought back, arguing that these restrictions hinder timely access to public health data and investigative information and that access to these documents actually impedes identity theft (Boles, 2012).

Most states that have instituted hold periods for death certificates also impose direct-interest laws to govern access to the records prior to the end of the hold period. Direct-interest laws restrict access to death certificates to specific classes of people. Often, this includes individuals who can prove a particular relationship to the deceased (such as spouses, children, siblings, and parents), legal representatives of the deceased's relatives, funeral home directors, and/or members of an accredited genealogical society. In some cases, these laws specify a seemingly arbitrary list of individuals who can claim a direct interest. For example, prior to the expiration of the state's 25-year hold period, Maine grants death certificate requests to "that person's spouse, registered domestic partner, descendant, parent or guardian, grandparent, sibling, stepparent, stepchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, personal representative or that person's duly designated attorney or agent or attorney for an agent designated by that person or by a court having jurisdiction over that person" (22 M.R.S.A. § 2706). Others are vaguer and give state officials greater discretion. For instance, Mississippi allows access by individuals with a "legitimate and tangible interest" (Miss. Code Ann. § 41-57-2). Many states with restrictive vital records laws allow the state to approve research agreements that grant access to certain death certificates, but these generally require confidentiality clauses that would be incompatible with journalistic endeavors and are also up to the state's discretion.

Some news outlets in closed states have found workarounds. An article in the *Texas Tribune* linking an increase in people dying at home to coronavirus deaths relied heavily on available response data from the Houston Fire Department (Ornstein & Hixenbaugh, 2020). Another Texas paper, the *Victoria Advocate*, relied on jail records and "custodial death reports" to hold the government accountable when jail inmates suffering from withdrawal began dying at an alarming rate (Venable, 2019). A public fight on Facebook and some key interviews helped the *Pittsburgh Post-Gazette* illuminate discrepancies in the number of COVID-19-related deaths in the area despite lack of access to actual death records (Hamill, 2020). And a series by the *Bucks County Courier Times* about unclaimed remains costing local Pennsylvania governments money included repeated calls for help from the public. The paper, part of the USA TODAY Network, was able to fill in gaps where public information laws prohibited reporters' ability to identify the dead. In states with extremely limited or no access to death records, stories including any kind of detail about COVID-19 are almost impossible to complete, Dukes said (T. Dukes, personal communications, July 22, 2020).

"So many people are dying of this disease, and we cannot see them. Death records are the only window we have into identifying these people in most cases," he said. "I think that's one reason some people were so slow to take this (pandemic) seriously – not seeing the people's real stories on the news."

Conclusion

The value of information obtainable only through death records can't be overstated: "This is hands-down the most valuable data set in our possession," said data journalist MaryJo Webster, adding that her team at the *Star Tribune* in Minneapolis does large-scale investigations relying on death records every year (M. Webster, personal communications, July 15, 2020).

But even in some states with openly written laws, journalists find themselves unable to easily access information that should be publicly available.

“One of the challenges, when you have a system set up where the information is public but you have to come in person to get it – some of this is cost-prohibitive,” Dukes said of his issues in North Carolina (T. Dukes, personal communications, July 22, 2020). “Right now, when we say we need to get these electronically, it’s not because we’re lazy. We really can’t go in person. It’s a public health issue.”

In the case of COVID-19, stories in some of the hardest-hit places, including New York, “didn’t get the same level of attention” because of prohibitive laws, Jones said (C. Jones, personal communications, July 13, 2020). He had to focus his largest stories about the virus on open states like Michigan because the information simply wasn’t available to him in other states.

With such an obvious disadvantage to the public in closed-access states, what causes a state to implement laws prohibiting access to this important information? Interestingly, the states with the most open death records laws seem to have little in common. The list of places with open laws includes some of the country’s largest populations and some of its smallest; historically liberal, conservative and swing states; those with large cities and those that are mostly rural. That brings forward the question: What shapes the creation of these laws? Are they based on the whims of those lawmakers in power at the time the laws were written?

Some opponents of open records laws point to privacy concerns. The National Association for Public Health Statistics and Information Systems has previously fought against the open release of death records under the guise of protecting personal privacy, creating model laws restricting access to death certificates. But in a September 2019 meeting of the Federation of Genealogy Societies, the director of the NAPHSIS said its new model law is poised to open access to the records as much as possible.

“There is really no data that supports that privacy issues and/or fraud is inhibited more in a state that has closed records or huge embargo dates than in states that have open records,” said Shawna Webster, NAPHSIS director. She said her goal, and the goal of the group’s board, would be to eliminate the privacy restrictions on death records in particular, eliminating the embargo on the records that the group had written into its 2011 model law, which has been adopted by many states.

This reversal, the authors hope, is only a first step forward to more open laws across the country.

Indeed, now is the time for journalists and open government advocates to come together and propose solutions to the secrecy surrounding death records. Some work they could and should do includes:

- Work with states that have research agreements to come up with a model research agreement for journalists that might be acceptable even in closed death records states.
- Work with trade associations and other stakeholders to come up with model legislation that would include journalists’ access to death records as well as improvements to/digitization of records across state governments.
- Publicize our research to state press associations to add to their lobbying agendas, especially while legislatures are open to improving the information being disseminated to the public.

Only by working to make these improvements can we ensure that necessary stories are being told, allowing the public access to the information and context it deserves in serious situations.

Reporters like Dukes lamented their inability to convey the full impact of the COVID-19 pandemic, adding to the burden of the public health crisis rather than easing it (T. Dukes, personal communications, July 22, 2020). Dukes recalled that after terrorist attacks, some natural disasters and mass shootings, when names of the victims were released to journalists and the public, the nation was given a chance to mourn and come together around a common grief. He hasn't seen the same reaction to the pandemic, an issue he attributes to lack of access to records of those who have died.

“It strikes me that given so much death (with COVID-19), we're not a nation in mourning,” Dukes said. “It's kind of a leap to go back to the importance of public records, but that's the key to understanding the scale and the scope of this situation.”

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