

## Editor's Note

# Home Address Exemptions are the Wrong Approach in Protecting Privacy

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Blanket exemptions in public records laws to keep home addresses secret are well-intentioned, but will not protect people from harm, and will only further government corruption.

These broad-based exemptions need to end.

In this issue of the *Journal of Civic Information*, Jodie Gil, Robert A. Smith, and Kauther S. Badr of Southern Connecticut State University examine how states manage the release of home addresses in public records, and they provide an explanation for each state in the appendix. The study follows up a previously published manuscript in this journal by Gil in 2019.<sup>1</sup>

It turns out that states are all over the board on whether or not they consider home addresses open or closed. Some states employ balancing tests. Some give journalists and others more access to information than other people. Some states provide secrecy for information contained in public records about minors or individuals in law enforcement, such as police officers and judges. Some allow individuals to request their specific information be secret. Some exempt records in their entirety if they contain an address, such as gun permits. Some states even criminalize the release of home addresses from public records – a Class 6 felony in Arizona.

It's a mess, really, and likely to get more muddled this spring as legislatures propose further laws to protect individuals' privacy. Gil et al. provide excellent recommendations for policy makers on this topic, particularly in balancing privacy with the public's right to know.

The bottom line is that legislation broadly exempting home addresses from release in public records is harmful for several reasons:

1. These exemptions restrict legitimate, beneficial purposes

There are countless reasons why home addresses are essential to government accountability, journalism, and even the economy. Journalists need addresses to find key sources for legitimate newsgathering. Gil et al. list important stories that could not have been done without

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<sup>1</sup> Jodie Gil, *Tracing Home Address Exemptions in State FOI Laws*, 1 J.CIVIC INFO 1, 75-116 (2019), <https://journals.flvc.org/civic/article/view/115660/113900>.

home addresses in public records. Revelations include politicians who don't live in the communities they serve, prominent leaders who are slumlords, and the extent of police brutality exposed by journalists finding and talking to witnesses and victims.

Businesses need to know who they are dealing with, or lending money to. Even average people want to find long-lost friends or relatives. There was a reason why, in the not-so-distant past, everyone relied on that huge database of everyone's personal phone number and home address. We called it the white pages.

Knowing where people live has always mattered, and it always will.

## 2. Exemptions provide a false sense of security

The intent of these exemptions is that people will be able to protect themselves from stalkers and others who would harass or do harm. The reality, however, is that redacting home addresses in public records is not going to make a difference – nobody will be safer.

Take driver's license records, for example, which were once widely used for legitimate purposes to find people's home addresses. In 1989, stalker Robert John Bardo of Tucson was infatuated with actress Rebecca Schaeffer and angered by a romantic role she played that inflamed his jealousy. He paid a private investigator to get her address from motor vehicle records, then drove to her home in West Hollywood and killed her.

Congress passed the Driver's Privacy Protection Act (DPPA) to make driver's records secret. However, private investigators are exempt in the law, so someone could still obtain a home address. This law, even if in effect in 1989, would not have protected Schaeffer from Bardo.

Personal safety has not been protected by the DPPA, and the legitimate use of that information has been restricted by those who would do good for society – a well-intentioned law gone bad.

## 3. Home addresses are available elsewhere

A motivated stalker doesn't even need a private investigator – or public records – to get one's home address. Anyone with a credit card can acquire personal information online through commercial information providers.

For example, on Oct. 5, a former doctoral student at my university was arrested on suspicion of shooting and killing a department head. Had admissions officials conducted background checks on graduate student applicants, they would have quickly discovered the suspect had a violent criminal past.

I know because following the shooting I went online to Intelius and looked up the suspect's background. For \$24.86 per month, I have unlimited access to Intelius reports, which I use for news reporting class demonstrations. Anyone can go online and pay \$3.99 for a one-time report, or 95 cents for a one-week trial of all the addresses they want to look up.

Within a few minutes, I had the suspect's complete name, date of birth, previous jobs, relatives, phone number, home address, email address, neighbors' names, height, weight, ethnicity, list of previous convictions, and more.

Some of this information was gleaned from public records, and some from commercial sources, such as credit card companies. So much information is collected on every person that there is no way to keep it out of the public domain, including personally identifiable information.

It is too valuable for businesses – this information greases the nation’s economic machine, which is no doubt why a majority of public records requests are submitted by commercial interests.<sup>2</sup>

Ultimately, wholesale home address exemptions result in those with means – those who can afford the \$24.86 per month – to acquire this information, and those without means (including smaller news organizations and freelancers) left in the cold, furthering the information gap and societal power differentials.

#### 4. Exemptions are based on fear-inspiring anecdotes, not data

The assumption in home address exemptions is that criminals are finding people’s home addresses through public records all over the country, all the time. Is this true?

We have little empirical data to support this assumption (please, email me the studies if you know of any!). In fact, some research has found that property records online have no relation to increased crime.<sup>3</sup> Yet, people fear the worst.

I get it – people are more and more fearful for their personal safety and privacy. According to one study, the greater fear of privacy invasion, the less supportive one is of journalists having access to public records.<sup>4</sup>

In grad school I surveyed the 39 county clerks in Washington state to ask them if they knew of anyone using court records to harm someone. Only one knew of such a case, where a lawyer used court records to get back at an ex-spouse.<sup>5</sup>

No doubt there are cases where someone can point to the exact public record that included a home address, that a person requested, for doing harm. Many counties make it easy by providing search functions online to find the addresses of property owners.

But do we really know if home addresses in public records create a significant problem in society? I don’t think so.

#### 5. On a slippery slope toward criminalization

More and more states are passing anti-doxing laws to criminalize the dissemination of home address information intended to inflict harm on an individual. This is a slippery slope with constitutional concerns.

What happens if journalists, perhaps aggressive in holding public officials accountable, publish a sheriff’s home address in regard to an important matter of public interest? Could those journalists be thrown in jail? No way, right?

Yes way.

That’s what happened to the two owners of the *Phoenix New Times* when they published former Maricopa Sheriff Joe Arpaio’s home address in an investigation into his commercial property dealings. Arpaio conducted a three-year investigation into whether the newspaper

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<sup>2</sup> Margaret Kwoka, *FOIA, Inc.*, 65 DUKE L. J. 7, 1361-1437 (2016).

<sup>3</sup> Geoffrey Propheter, *Do Open Records Facilitate Criminal Behavior? The Case of Property Tax Records*, 28 J. PUB. MGMT. & SOC. POL’Y 1-2 (2021).

<sup>4</sup> David Cuillier, *Public Support for Press Access Declines as Personal Privacy Concerns Increase*, 25 NEWSPAPER RES. J. 4 (2004).

<sup>5</sup> David Cuillier, *AccessNorthwest Study Shows Access to Court Records Varies by County in Washington State*, AccessNorthwest (Oct. 7, 2004), <https://web.archive.org/web/20050304045254/http://www.wsu.edu/%7Eaccessnw/resources/court%20study.htm>.

illegally published his address, resulting in a subpoena and ultimately the jailing of the two journalists.<sup>6</sup>

No doubt more anti-doxing legislation will be proposed this spring, and in light of high-profile cases the constitutional concerns likely ignored.<sup>7</sup>

## 6. These exemptions don't pass scrutiny

An analogous way of thinking about this privacy-access dilemma is by applying an intermediate scrutiny test to home address exemptions, as a court might in determining the constitutionality of speech restrictions under the First Amendment:

1. Do these exemptions advance a substantial or important governmental interest in protecting people's privacy? No. Home address information can be obtained through a variety of other ways, as noted above. These exemptions do little to protect people, so they do little to advance that important government interest.
2. Is the restriction on information narrowly tailored in a way that does not substantially burden more information gathering than necessary? No. These exemptions restrict information gathering for legitimate purposes by journalists and average citizens who cannot afford subscriptions to commercial information services.

Unfortunately, the U.S. Supreme Court so far has yet to explicitly deem a constitutional right to public records, and has even upheld the DPPA.<sup>8</sup> But perhaps further court challenges to exemptions should apply a similar test in balancing privacy with the right to know.

This issue is not going away, and it is inevitable that more bills will be proposed in legislatures this spring to broadly exempt home addresses and other personal identifiers from public records. I would hope lawmakers would pause and not let fear drive further moves toward secrecy.

Without a doubt, the concerns of privacy invasion are valid, and the nature of U.S. politics and society appear to be headed down a dark path. But the solution is to put more resources and effort into policing the actual bad behavior, not closing down information. Stalking laws directly address stalking. Homicide laws address homicide. Other criminal laws address identity theft, doxing, and harassment.

Eviscerating public record laws is not the answer. If we criminalize access to information, then only criminals – and those with means – will have information.

DOI: 10.32473/joci.v4i4.132762

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<sup>6</sup> See *Charges Dropped Against Arizona Media Executives*, Reporters Committee for Freedom of the Press (Oct. 19, 2007), <https://www.rcfp.org/charges-dropped-against-arizona-media-executives/>.

<sup>7</sup> See an excellent analysis of how these anti-doxing laws have significant First Amendment implications, in Frank LoMonte & Paola Fiku, *Thinking Outside the Dox: The First Amendment and the Right to Disclose Personal Information*, 91 UMKC L. Rev. 1 (2022).

<sup>8</sup> For analysis of the potential ramifications of this 2000 case, see Joey Senat, *Reno v. Condon Opens Door to More Access Limits*, 24 NEWSPAPER RES. J. 2 (2003).