

NewsBreak: CriminalSearches.com offers free access to criminal records
By George H. Pike*

It recently has become much easier to find out whether your daughter's boyfriend or your new neighbor has a criminal record. CriminalSearches.com (www.criminalsearches.com), a new advertiser supported service from PeopleFinders.com, now provides free access to criminal records from all 50 states and 3,500 counties across the search.

With a person's name and a click of the mouse, you can potentially find out the person's criminal history from traffic citations up to the most serious offenses. Or, if you are concerned about your neighborhood, you can enter in your address and get listings of all persons in the immediate area with criminal records.

Criminal records, which can include arrest records, court filings, "rapsheets", inmate records, and similar information, are all public records. Many of these records have been available electronically for a number of years. However, with limited exceptions, these records have generally been only available through secure databases. A researcher who is interested in finding out about a person's criminal record had to register and enter into a subscription with, or pay for access using a credit card through ChoicePoint, Intelius.com or other service providers. A few states or municipalities put some records online, and many states have a "Megan's Law" registry of sexual offenders available online. However, free access to comprehensive records has been limited.

The availability of public records on the Internet has been and continues to raise privacy and liability concerns, and this latest development is no exception. Public records by their definition are potentially accessible by anyone. Prior to the availability of online databases, however, researchers often had to comb through courthouses, government agencies, and police precincts in order to obtain the records. The difficulty in obtaining a comprehensive collection of information about a specific person gave rise to a concept known in privacy law as "practical obscurity". While the records may be public, the practical difficulties in obtaining them made them effectively obscure, and relatively private.

With comprehensive criminal records now available for free through the Internet, do persons with a criminal history (even traffic citations) have any privacy rights to keep those records "practically obscure?" The answer is usually no. Privacy law recognizes the existence of privacy rights in certain types of information. The classic definition of what is considered private is information about which the person has, "exhibited an actual expectation of privacy," and that the person's expectations about the privacy of that information are what "society is prepared to recognize as reasonable." Because criminal records consist of information that has been and often remains publicly available, courts have rarely found that they meet either of these two conditions.

There are some protections that exist against misuse of criminal records. The Fair Credit Reporting Act requires employers who search for criminal histories to notify the prospective employee of the search. And while most "Megan's Law" databases have been found to not

violate the offender's privacy, courts have often warned against use of the data for retaliation or threatening purposes.

Reliability and accuracy—or inaccuracy—of the records raises additional questions. CriminalSearches.com reports that it obtains its records directly from local and state agencies. These agencies can vary in the amount of information they provide, and some agencies do not provide information.

CriminalSearches.com includes some offenses as minor as traffic tickets, but a search for a traffic citation I got a couple of years ago (I slowed, but didn't stop at a stop sign) came up blank. A search that I ran for the name 'Martha Stewart' did not disclose her recent, highly publicized, conviction, but did identify 24 other Martha Stewarts with some offense on their record. In both of these cases it appears that the relevant agency (my county's traffic court, and the federal criminal courts) do not provide information to CriminalSearches.com.

CriminalSearches.com also provides some records of offense that have been dismissed or otherwise expunged. In one of my searches, I encountered a person with several offenses listed, but in reviewing the details, virtually all of those cases had been dismissed. A New York Times reporter ran a search on a colleague which identified the colleague's speeding citation. The colleague reported that he had gone to traffic school and the record should have been removed.

Users of this data need to be aware of these issues and the potential risks for relying on this information. A person who might wish to investigate a potential child care provider could easily not find any records simply because the local agency did not provide any. The reverse is also true. A search for your daughter's boyfriend could reveal that he has a criminal offense background, but failing to look closely at the records could cause you to miss the fact that it is a minor traffic infraction—or that the offenses belong to another person with the same name.

CriminalSearches.com does use a disclaimer about its information. The disclaimer discourages relying on their data for several reasons, and cautions against making assumptions "solely" on the information displayed on the website. Notably, this is contrasted with the Website's larger banners asking, "Do you really know who people are?" and "Are your children safe with them?"

It is likely that this kind of public record information will become more and more available through free resources. Property records, court dockets, and address/phone number information have already been available on the Internet for years. But some commentators are asking whether that availability will continue to raise privacy concerns. They point out that people freely post extensive details about themselves of Web 2.0 applications such as Facebook, MySpace, YouTube. Does this mean that society is undergoing a change in what we are prepared to "recognize as reasonable" in our expectations of privacy? If CriminalSearches.com reflects a demand for "practically obscure" public records, perhaps it also reflects a change in what society considers to be private.

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