

DIGITAL GOVERNMENT INNOVATION

Number 2004/02 June 2004

HOW PUBLIC IS TOO PUBLIC? PROPERTY RECORDS AVAILABILITY ON NORTH CAROLINA COUNTY GOVERNMENT WEB SITES

■ Henrietta H. Presler

Executive Summary

In accordance with North Carolina public records law, government documents such as property tax records are available for public access. In the past, however, access to records was limited to the working hours and the physical office of an agency. Now, local governments have the capability to make property tax records available online. This research explores how counties balance the advantages of online availability of information with the intrusiveness of greater access to citizens' personal information. A survey of North Carolina counties was used to develop recommendations on this issue for local governments.

Introduction

Did you know that if you are a property owner in Chatham, Orange, Durham, or Wake County, information about you and your property is online? This question was the hook for a February 18, 2004, local news channel story about property tax records online.¹ The reporter stopped property owners on the street, showed them their property tax information online, and asked for their reactions. The interviewees responded, unanimously, that they did not like their information being on the Web; it felt intrusive, and it upset them. The Wake County Revenue Director, when interviewed about the county's records, pointed out that North

Henrietta H. Presler graduated from the UNC Chapel Hill MPA Program in May 2004. This article was her MPA Capstone Paper, written with the advice and direction of Kevin FitzGerald, Director of the School of Government's Center for Public Technology; Shannon Schelin, program manager for the Center of Public Technology; and John Stephens, Associate Professor of Public Management and Government at the School. The article won the Deil S. Wright Capstone Conference Award for Outstanding Research Paper at the May 2004 Capstone Conference of Practical Research for Public Officials.

1. Mike Dunstan, *ABC Eyewitness News*, WTVD, February 18, 2004.

Carolina public records law does not restrict any of the information in the online records and that the county saves money by publishing the records online. If people do not want this information to be public record, he said, “they need to look to their state legislators to change the law.”

This news story highlighted the tensions among values that local governments face today as they decide whether to make property tax records available online. As the Wake County Revenue Director pointed out, the public records law in North Carolina defines public records very broadly, so that with a few exceptions, government documents such as property tax records have been available for public access since the advent of the public records law.² In addition, local governments and citizens value the governmental openness, increased efficiency, and better service that result from making property records available online.

As the property owners’ comments reveal, however, making property tax records available online is a change in the nature of public access that some people perceive as negative. Records now can be accessed twenty-four hours a day, seven days a week, from anywhere and by anyone in the world. Previously, access was limited to the working hours and to the physical office of an agency. This increased access to information seems to intrude upon personal privacy,³ and some citizens are concerned that others will misuse their information to threaten their safety or steal their identities.

Local governments must balance the advantages of online availability of information with the intrusiveness of greater access to personal information, and they must do so without violating the laws governing public records. Consequently, local governments need guidelines to help them strike a balance on this issue and decide whether and in what form to publish property records online. This bulletin addresses the question: *How can North Carolina county officials best weigh the advantages arising*

2. N.C. Gen. Stat. Chapter 132 (hereinafter G.S.) defines public documents as “all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.”

3. “Public Raises Issues About Privacy of Information on Property Records,” *For the Record: Newsletter of the Property Records Industry Joint Task Force* 3, no. 2 (March/April 2003).

from the online presentation of information with the intrusiveness of greater access to personal information when deciding whether to publish all information from property tax records to their Web sites?

Literature Review

The literature shows the number and complexity of issues surrounding governments’ technological progress. The following issues are among those explored by the literature:

- To what extent governments are providing online services desired by citizens
- Which online services governments should provide
- Sale of public records
- Inclusion of privacy and security statements on government Web sites in order to inform and protect users
- Citizen privacy lost through aggregation of information (matching information about citizens from multiple databases)

This bulletin focuses on the tensions among values when technology, citizens, and government interact. Chief among these values are transparency, efficiency, and personal privacy.

Transparency of government is considered one of the essential elements of democracy.⁴ Transparency, defined as “open information, equally available to all,” leads to better public decision making through more complete public discourse. In turn, more openness should lead to greater trust in public decisions. One author states, “It is too seldom noted how pervasive is the contemporary drive towards ever greater transparency.”⁵ This drive takes the form of adding channels of access to government, such as online access, which increase at least the perception of transparency, if not actual transparency of government. The ideals of open government were included in the U.S. Constitution, and later, laws that reinforced open government followed.⁶ State public records laws, the federal Freedom of Information Act of 1966 (FOIA), and subsequent amendments to FOIA [Electronic Freedom of Information Act (EFOIA) of 1996] ensured public

4. Robert D. Schulzinger, “Transparency, Secrecy, and Citizenship,” *Diplomatic History* 25, no. 2 (Spring 2001): 165.

5. Robin J. Ives, “The Rise and Rise of Open Government,” *Contemporary Review* 283, no. 1654 (Nov. 2003): 265.

6. *Id.*

access to government records.⁷ North Carolina's public records law was passed in 1935.⁸

A second value is efficiency of government, which concerns the unit costs of providing government services.⁹ Efficiency has become increasingly important as taxpayers demand more and more services while wanting to pay less.¹⁰ Governments are pushed toward offering more and better services, taking advantage of technology, and keeping pace with the private sector in offering online services.¹¹ Publishing records to the Web cuts time and costs by automating the provision of information to citizens and businesses.¹² In addition to cutting costs, publishing records online results in greater access to government.

However, increased access affects citizens' sense of privacy. Privacy is both a legal and a nonlegal concept.¹³ Even before the advent of the Internet, government records containing personal information evoked the issue of personal privacy.¹⁴ In some cases, records or portions of records containing personal information are protected from public view by federal or state legislation because the public availability of certain information would intrude upon personal privacy.¹⁵ For example, parts of employee personnel records are exempt from the North Carolina public

records law.¹⁶ However, the availability of records online places this issue in sharper relief. Citizens object when governments sell their information to private entities and express concern that certain individuals "might be harmed if their information is made public (sic), such as abused women or law enforcement personnel."¹⁷

Property Tax Records

Local governments are custodians of many types of records: documents that affect the title to real or personal property, vital statistics, tax information, student records, health records, voter information, Geographic Information System (GIS) data, and court records.¹⁸ Each kind of record presents particular considerations in balancing the tensions among transparency, efficiency, technology, and citizens' sense of privacy.

A good example of the interplay among values is when counties publish property tax information to the Web.¹⁹ A great deal of information about a property owner can be gleaned from an online property tax record.²⁰ People have been able to get this information

7. Seth Porges, "Freedom's Just Another Word," *Editor and Publisher* 136, no. 43 (Dec. 1, 2003): 4.

8. David M. Lawrence, *Public Records Law for North Carolina Local Governments*, 2nd ed. (Chapel Hill, N.C.: Institute of Government, 1997), vi.

9. David Ammons, "Introduction," in *Accountability for Performance* (Washington, D.C.: ICMA, 1995), 14.

10. David Ammons, "Raising the Performance Bar Locally," *Public Management* (September 1997): 10.

11. David Dunn, "Virtual Government Puts Locals Online," in *American City & County* (December 1999): 12.

12. Emmett Curl, Director of Revenue, Wake County North Carolina, July 2003, interview.

13. For a more complete exploration of the concept of privacy and its relation to the law, see John L. Saxon, "Privacy and the Law," *Popular Government* 67, no. 3 (Spring 2002): 6-12.

14. David M. Lawrence, *Public Records Law for North Carolina Local Governments*, 2nd ed. (Chapel Hill, N.C.: Institute of Government, 1997), 25.

15. For example, the Freedom of Information Act that regulates federal agencies contains this language: "[T]o the extent required to prevent a *clearly unwarranted invasion of personal privacy*, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records. . . ." 5 U.S.C. § 552 (a) 2, as amended by Public Law No. 104-231, 110 Stat. 3048 (emphasis added).

16. David M. Lawrence, *Public Records Law for North Carolina Local Governments*, 2nd ed. (Chapel Hill, N.C.: Institute of Government, 1997), 82. See Lawrence's Chapter 6, "Personnel Records," for a complete discussion.

17. "Public Raises Issues About Privacy of Information on Property Records," *For the Record: Newsletter of the Property Records Industry Joint Task Force* 3, no. 2 (March/April 2003).

18. A. Fleming Bell, II, and Warren Jake Wicker, "Records Management and Access, including Register of Deeds," in *County Government in North Carolina*, 4th ed. (Chapel Hill, N.C.: Institute of Government, 1999), 121.

19. The Machinery Act, G.S. 105-272, provides "machinery for the listing, appraisal, and assessment of property and the levy and collection of taxes on property by counties and municipalities."

20. Usually, counties present an online database that a user can search through fields such as owner name, property address, parcel number, tax identification number, and PIN number. A search result is a record in which the owner's name is presented with the address of the property and some or all of the following information: value of property, information about structures on the property, taxes owed and/or paid, tax identification number, parcel number, and a picture of the property. Often, property tax information is accessed through a GIS system, which makes many layers of data available, including aerial photography of properties. As well, property tax information is often linked to Registers of

for a long time from tax assessors' offices, and some of it is not particularly problematic for citizens' perception of privacy. For instance, a person could find a property owner's address in the phonebook. However, recorded deeds, which are often linked to property tax records online, sometimes contain citizens' social security numbers, which is more problematic for privacy advocates.²¹ "Social security numbers are often sought by identity thieves, who use them to create false identification . . . and illegally access a victim's bank accounts and finances."²²

Counties save staff time and resources when they put the records online both because the real estate community and attorneys use the records extensively and because citizens use the online records rather than calling or visiting the office.²³ Therefore, in publishing property tax records, efficiency is a very strong consideration, and efficiency bolsters transparency. Despite the volume of personal information available in the records, privacy does not seem to weigh very strongly in a calculus about whether or not to publish property tax records online.

Methodology

To establish how county officials are currently making the decisions about publishing property tax records online, an online survey was conducted. The survey, found in Appendix A, was sent to officials from the 100 North Carolina counties. Officials were contacted by e-mail to request their participation. Information Technology (IT) or Management Information Systems (MIS) directors were surveyed in all of the counties that had IT or MIS departments. Otherwise, county managers were surveyed.²⁴ These officials were chosen because of the likelihood that they would have had some role in the decision process of whether to publish records to the Web. In some cases, surveys were forwarded either by county managers or by IT directors to tax assessors when appropriate. The survey

Deeds online databases. Recorded information about the property could include deeds of trust.

21. "Making Personal Information Public Under Scrutiny," *For the Record: Newsletter of the Property Records Industry Joint Task Force* 5, no. 2 (March/April 2002).

22. *Id.*

23. Emmett Curl, Director of Revenue, Wake County North Carolina, July 2003, interview.

24. The number of information technology directors surveyed was fifty-eight. The number of county managers surveyed was forty-two.

explored—through open- and close-ended questions—whether or not the property tax records were online, how the records were presented, the decision process for publishing records, and factors in this decision process.

Survey Results

Of 100 North Carolina counties surveyed, 78 counties responded to the survey. Counties with larger populations were more likely to respond to the survey (see Appendix B, Figure 1). This means that this analysis may be less generalizable to smaller North Carolina counties. In addition to the survey, county Web sites were accessed to obtain some basic information about all 100 of the Web sites. From this information, it was possible to determine that the nonresponding counties were slightly less likely to have published their property tax records to the Web than the responding counties, and that this finding was statistically significant (See Appendix B, Figures 2 and 3). Of the 100 counties, 58 counties have records online, 36 counties do not have records online, and 6 counties do not have a Web site.

Of the 78 responding counties, 50 counties (64 percent) have property tax records online, while 24 counties (31 percent) do not have records online and four counties (5 percent) do not have a Web site. Thus, a significant number of counties have already published property tax records on the Web.

While many counties have published records online, few counties have chosen to limit the ways in which records on the Web can be searched. For example, among the responding counties that have published records to the Web, all 50 allow records online to be searched by the name of the owner. However, 44 (88 percent) of responding counties allow records to be searched by the address of the property. Other common methods by which property records can be searched (but that were not surveyed) are by tax identification number, parcel number, and "PIN" (personal identification number). Property tax information related to taxes is linked to the counties' registers of deeds online databases. In addition, only two responding counties require registration and a password for viewing the records. One of these counties charges a yearly fee for viewing the records.²⁵ Presenting records with limited search fields, registration requirements, or payment requirements could be utilized as a means to limit ac-

25. The yearly fee was \$50.

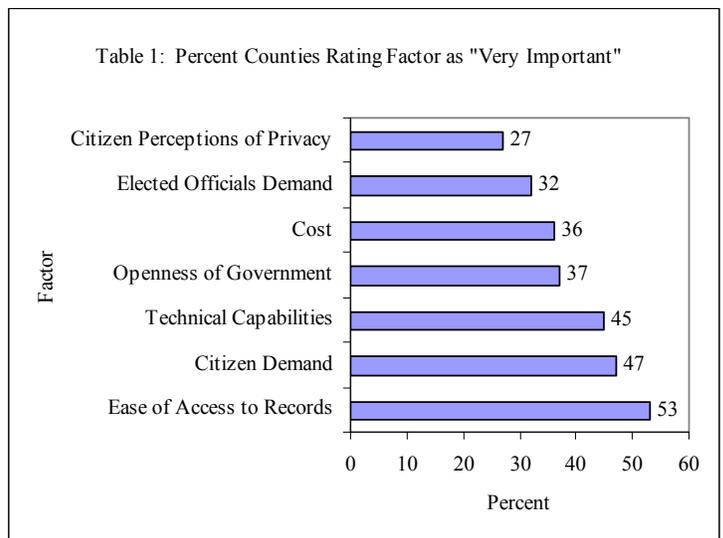
cess to the records online.²⁶ These limitations could be seen as mitigating privacy concerns since they could discourage casual records searches.

Counties that published property tax records online were asked to describe the decision-making process for publishing records online in an open-ended question, and 44 county officials responded. The open-ended question was intended to expose whether a formal decision-making process, such as a written policy, was being used to make the decision. Instead, the responses did more to expose what influenced the decision makers and whether these influences came from outside the organization (external) or from within (internal). The responses were coded to reflect the influencing factors in the decision:

- *Public demand (external)* for online records was the factor in 29.5 percent of cases.
 - *Both public demand (external) and a need for efficiency (internal)* was the factor in another 25 percent of cases. The efficiencies mentioned were that staff members do not have to spend time responding to queries about properties and that traffic to the office is reduced since citizens and businesses can look up records themselves.
 - *Staff decision or demand based on expected efficiencies (internal)* was the factor in 22.7 percent of cases.
 - *Need or push towards innovation (internal)* was the factor in 13.6 percent of cases.
 - *The records were already public (internal)* was the factor in 9.1 percent of cases.
- Respondents emphasized that whether or not the respondent or staff members thought records should be online, the fact that they were public records dictated that they should be published. This internal decision was based, on its face, not on public demand but on a definitional concept of what public records are.

26. Some counties go so far as to limit use of records to workstations within the office. For instance, the Lake County Illinois Recorder of Deeds (these are property records rather than tax records) states: "The only way you can currently view data or images is to come into our office and use one of the public viewing PC workstations. While all of our data is considered public information, at this time we have made the decision to do everything we can to protect your identity by NOT putting your personal information and your signature out on the Internet." Several North Carolina counties, including Currituck County, use workstations within tax assessor offices only.

All respondents were asked to rate, on a scale ranging from "Not Important" to "Very Important, the several factors in deciding whether or not to publish records online. Table 1 shows the factors rated and the percent of counties that rated each factor "Very Important". Easy access to records was rated "Very Important" by the greatest number of jurisdictions (53 percent), followed by citizen demand and technical capabilities. Between respondents who published records to the Web and those that did not, there was a statistically significant difference in their ratings of the importance of the following factors: citizen demand, cost, and ease of access to records (see Appendix B, Figure 4).



A logistic regression model showed that of the factors surveyed, citizen demand and cost are the factors that best predict whether records in a jurisdiction are published to the Web (see Appendix B, Figure 5). Thus, two of the three factors that were statistically significantly different between respondents who published records online and ones who did not help to predict whether or not counties publish records. Those two factors are citizen demand and cost.

Counties that had published records to the Web were asked if they had received any citizen complaints about having public records containing their personal information available on the Internet. Twenty percent of counties reported that they had received citizen complaints, while 80 percent had not. On average, counties that had received citizen complaints rated the citizen perceptions of privacy factor lower than did counties that had not received citizen complaints. This relationship is unlikely to have occurred by chance (see Appendix B, Figures 6 and 7). However, this research cannot establish a causal relationship between

rating the factor of citizen perceptions of privacy lower (putting less emphasis on citizen perceptions in the decision-making process) and citizen complaints.

Conclusions and Recommendations

Because federal and state legislation that could provide rules for local governments has been slow in developing, local decisions about public records online are the only solutions immediately available.²⁷ Some organizations regard local, voluntary solutions as preferable to federal and state mandatory measures. For instance, the National League of Cities (NLC) opposes any “federal law or regulation which would limit a municipality’s discretion in determining what information held by a municipality should be made available electronically.”²⁸ This position advocates for community-based decisions about what records are published online and also reflects the NLC’s interest in municipal autonomy. The National Association of Counties (NACo) advocates a “goals-based approach to forestall federal preemptive action to impose specific privacy requirements on local government.”²⁹ Others, such as Susan Schwartz, suggest that governments should focus on punishing people who misuse records—such as identity thieves and stalkers—rather than limiting online records.³⁰

Citizens should also take responsibility for limiting the information that government collects about them. The Property Records Industry Association (PRIA) agrees with this solution. Its Records Access Policy Committee proposes that model legislation relating to public documents include, “severe penalties . . . for engaging in identity theft, fraud and stalking . . . and] special penalties when public documents are used to commit these crimes.”³¹

27. Jeff Moad, “Privacy Issues Surrounding the Internet,” *PC Week* 14, no. 35 (Oct. 27, 1997): 83.

28. “2004 Information Technology and Communications,” *2004 Platform*, National League of Cities. Available at www.nlc.org (accessed Feb. 9, 2004).

29. “2003–2004 Telecommunications and Technology Platform,” *American County Platform*, National Association of Counties. Available at www.naco.org (accessed January 25, 2003). Other organizations such as the Electronic Privacy Information Center push for comprehensive federal legislation to protect personal information such as health, voters’, and protesters’ information.

30. Susan Schwartz, “Public or private?” *Quill* 90, no. 7 (September 2002): 24.

31. “Items for Consideration in Model Legislation,” Records Access Policy Committee of the Property Records

As counties decide whether to publish property tax records online, the existence of demand is an important factor, as the survey results show. It is a factor that is both acknowledged explicitly and shown to be statistically significant. A majority of counties rated easier access to records as a very important factor in publishing property tax records. Thus, one conclusion is that local governments are being responsive to public demand for greater access to government.

While public demand is very important, citizens’ perception of privacy seems to be a less important consideration for counties when they decide whether to publish records online.³² Citizens’ perception of privacy was rated “Very Important” by fewer counties than any of the other factors surveyed. This research suggests a relationship between counties’ emphasis on this factor and citizen complaints. As the public focus on privacy increases, community perceptions of privacy should be considered explicitly in decision-making processes for making records available online.³³

Many options are available to local governments for taking their communities’ perceptions of privacy into account. First, local governments should be conscious of how values are currently being weighed in decisions about publishing records online. Second, since communities can differ in their sense of what is appropriate, local governments should make efforts to assess community perceptions and generate community solutions on privacy considerations. Local governments could form a citizen committee that focuses on technology issues, hold a community forum, or conduct a citizen survey. Third, development or adoption of principles such as Fair Information Practices would help raise local governments’ consciousness of citizens’ privacy. The NACo’s American Counties Platform supports the adoption of Fair Information Practices, a “voluntary online privacy standard.”³⁴

Industry Association (July 9, 2003). Available at www.pria.org (accessed February 6, 2004).

32. Only twenty of seventy-eight responding counties rated citizen perceptions of privacy as a “Very Important” factor in the decision whether or not to publish records online.

33. “Public Raises Issues About Privacy of Information on Property Records,” *For the Record: Newsletter of the Property Records Industry Joint Task Force* 3, no. 2 (March/April 2003).

34. “2003–2004 Telecommunications and Technology Platform,” *American County Platform*, National Association of Counties. Available at www.naco.org (accessed January 25, 2003). The Fair Information Practices are: Notice, Choice, Access, and Security. For more information on Fair

Fair Information Practices do not answer the question of whether specific records should be published to the Web. Rather, they advocate providing disclosure and choice to individuals and careful consideration of what information needs to be collected about individuals in order to satisfy a purpose.³⁵ Fourth, when local governments collect new information and make new records, they should mitigate privacy issues by collecting information more wisely. For instance, governments should collect only the information they need, thinking about how records will affect citizen privacy when they are made available. Even if it does not outweigh other factors such as efficiency, citizens' perception of privacy should be given consideration.

A further avenue of research would be to determine if the factors in decision making are rated similarly for records other than property tax records. Would public demand be as important a factor for records that are not important to a business community? To what extent is public demand equated with business demand? Answers to such questions would clarify the relationships among transparency, efficiency, and privacy and could help local governments develop a more universal framework for weighing these values as technology pushes governments to make decisions about making public records available online.

Information Practices, visit the Electronic Privacy Information Center at www.epic.org or see the Federal Trade Commission report at <http://www.ftc.gov/reports/privacy2000/privacy2000.pdf>.

35. "Privacy Online: Fair Information Practices in the Online Marketplace, A Report to Congress," Federal Trade Commission (May 2000), prepared by Division of Financial Practice, Bureau of Consumer Protection. Available at <http://www.ftc.gov/reports/privacy2000/privacy2000.pdf> (accessed June 30, 2003).

This bulletin is published by the School of Government to address issues of interest to government officials. Public officials may print out or photocopy the bulletin under the following conditions: (1) it is copied in its entirety; (2) it is copied solely for distribution to other public officials, employees, or staff members; and (3) copies are not sold or used for commercial purposes.

Additional printed copies of this bulletin may be purchased from the School of Government. To place an order or browse a catalog of School of Government publications, please visit the School's Web site at <http://www.sog.unc.edu>, or contact the Publications Sales Office, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@iogmail.io.unc.edu; telephone (919) 966-4119; or fax (919) 962-2707.

©2004

School of Government. The University of North Carolina at Chapel Hill

Printed in the United States of America

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes