

The Right for Pubic Access to Court Records and the Protection of Personal Data

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Abstract

One of the conclusions reached by the 2016-2017 National Conference on Judicial Reform is to ask the Judicial Yuan and Ministry of Justice to study the feasibility and legal framework of allowing public access to court records (including audio/video recordings and various documents submitted by the parties or created by the courts) after the prosecution and/or trial proceedings are ended. In some foreign countries, public access to court records has a long history, and it has been regarded as a more rational and objective way for the general public to closely observe the operations of the court. As court records have gradually been digitized, the ease of using these electronic records not only benefits relevant parties and courts, but also has important ramifications on public access to information held by the courts. Comparing to the traditional paper-based access regime, electronic access has dramatically lowered the costs of obtaining court records, and geographic and time limits are no longer obstacles for people who wish to access this information. However, in this big data era, the information privacy issues caused by the easy accumulation, combination, analysis, and re-use of electronic court records should not be ignored.

This article will first explore the theoretical and legal bases (including the potential constitutional basis) for public access to court records. It will then study the privacy and other issues (such as witness protection, rehabilitation, access to justice) associated with such public access regime. Special attention will be given to the different levels of impacts on personal data protection caused

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by different access models (i.e., the traditional paper-based access model, electronic access model, and the mixed access model). Finally, by taking reference to foreign practices and theories, this article will offer its own views and suggestions regarding how we can strike a proper balance between open justice and the protection of individual privacy.

Keywords: the right to privacy, personal data protection, freedom of information, public access to court records, judicial reform