



**Delivery Team Report to the Criminal and
Juvenile Justice Information Task Force**

Commercial Data Mining of Criminal Justice System Records

August 2008

Executive Summary

Minnesota law (Chapter 13) governs the collection, management, and dissemination of government data – in particular, it dictates the rights of individuals who are subjects of the data collected and maintained by government. Extensive procedures outline government responsibilities to inform data subjects and provide them with remedies if information is incorrect or inappropriately disseminated. These procedures, however, only affect government entities.

Criminal justice agencies, like other government entities, collect various pieces of personal data in the regular course of their duties. As agencies discuss sharing of information among criminal justice partners (all government agencies) and the value that represents, they also recognize the impact this sharing may have on the individuals who are the subject of these records. But what has also become more obvious is the impact of government data, created for a specific purpose, being used for decisions in non-governmental contexts – namely housing and employment decisions.

The same technology that provides greater information sharing capabilities for government also enhances the ability of private business to acquire, aggregate, and disseminate data to clients.

During extensive analysis of background checks and expungement of criminal records led by the Criminal and Juvenile Justice Information Policy Group and Task Force in 2006 and 2007, policymakers recognized the need for a greater understanding of businesses that use public data to provide background check services and other activities. The Policy Group noted the importance of understanding both the impact of criminal justice records for state-mandated purposes, as well as records being used outside that context.

This report details the work of a delivery team, appointed by the Criminal and Juvenile Justice Information Task Force, to examine current policy considerations related to non-government use of government data, and to assess how other jurisdictions in the United States have addressed the relationship between government and the businesses who acquire government data.

A number of different approaches have been adopted across the country, from efforts to improve the accuracy of data and require businesses to keep their data current, to applying principles of fair use to the private sector, to allowing data subjects to sue businesses that mine public data, to allowing the industry to regulate itself. Those approaches, and the advantages and disadvantages of each are explored in detail.

The team also discovered a need to educate both data subjects on the remedies available to them and businesses who seem unaware of regulations they may be subject to. For example, subjects have the ability to bring suit against an entity who uses their data, under the federal Fair Credit Reporting Act (FCRA), but they often don't have the means to sue. Further, many business who acquire and provide government data seem unaware they are subject to the FCRA. In other cases, businesses advertise “discreet” background checking services, which indicates no intention of informing data subjects that their information is being used to determine whether they should be granted housing or employment.

The team reviewed each of the approaches identified and informally assessed whether members would recommend certain approaches, recommend the approaches with caution, or not recommend an approach. Though this report does not contain formal recommendations for the Task Force and the

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Policy Group, it does provide a broad perspective on the existing practices in an effort to guide policy decisions and perhaps help policymakers create a hybrid solution that addresses the realities for Minnesota.

[NOTE: full report including appendices is posted on the conference website; it is minimized here to keep printed materials to a minimum]