

Need to Update Washington's Public Records Act

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Technology is Changing Transportation

- Companies offer new services based on the ability to determine
 - Where and when people wish to travel
 - What modes are available in specific locations
 - What each modal option costs
 - What the level of service will be
 - (wait & travel time)

Technology Allows for Cheaper, Better Data Collection

- Cellphone
 - Phone location (e-911, cell tower triangulation, etc.)
 - Location based services (LBS)
 - Application based tracking
 - Navigation apps
- Vehicle location / path
 - WiFi / Bluetooth sniffers (travel time / path)
 - Connected vehicle
- Payment systems
 - Electronic farebox
 - Tolls

Companies + Technologies = New Data Sources

- Data describe human, freight, and vehicle travel
- Traces: location of a person/device in sequence over time and space
 - Reporting interval changes (ping rate)
 - Spatial accuracy changes
 - Devices often equal a specific person

Private Sector Data Collection

- Is an intrinsic part of smartphone based systems
- “Location based services” require location data – which is turned into geographic traces of individuals

Money + Data = Business Opportunity

- Transportation Network Companies (TNCs)
 - Shared cars (w/ & w/o driver)
- Dockless personal transportation
- Parking
- Navigation (car / transit / walking)
- Freight delivery

Everyone Wants Data

- “Without big data analytics, companies are blind and deaf, wandering out onto the web like deer on a freeway.” – Geoffrey Moore

Public Sector...

- Would like to coordinate services
 - Necessary for effective first mile / last mile services
 - Manage subsidy payments
 - Manage the transportation network
- Have concerns with
 - Potential social equity issues
 - Congestion increases (TNC / Freight loading/unloading)
 - Safety (DPT operation)

So of course Public Sector Would Like Private Sector Data

- Where/how/when are these services being used?
- What are the impacts of these services?
 - Better ability to manage the system
 - Respond to public concerns
 - Use for planning system improvements
 - Regulatory functions

But if the public sector obtains private sector data, those data are subject to Freedom of Information Act (FOIA) requests through the Public Records Act (PRA)

Current State PRA

- Was designed when “records” were mostly paper documents
- Did not anticipate the collection of detailed data on individual’s daily activities
- Data collected at the request of a government agency are subject to release, even if the government never actually “touches” those data

Current State PRA

- All state “records” are releasable by FOIA unless specifically exempted under state law
- For example:
 - Electronic transit farecard records
 - Electronic toll records
 - CVISN records
 - Driver’s licenses

Current State PRA

- Not exempt:
 - TNC records of any kind (unless trips are paid for with ORCA)
 - Connected vehicle data
 - Any data transmitted to traffic signal systems
 - Or to/from public traffic control systems

Current Public Records Act

- Most of the new data sources have come into existence since the State's PRA was written
- This State's PRA was written to make government transparent, but also to guard the privacy of individuals
 - (That is why specific, sensitive records are restricted from public release)

PRA History

- Legal tension between
 - Public right to know (public interest)
 - Business trade secret
- Relatively little case history
 - Results in a lack of clarity on where trade secret stops and public interest begins

PRA History

- Washington State Supreme Court (Lyft, Inc. & Rasier, LLC vs. City of Seattle & Jeff Kirk)
 - “There is no categorical exemption for trade secret under the PRA” (pg 16)
 - Resulted in legal expenditures of over \$2M by all three major participants
 - And the release of the Uber/Lyft summary data

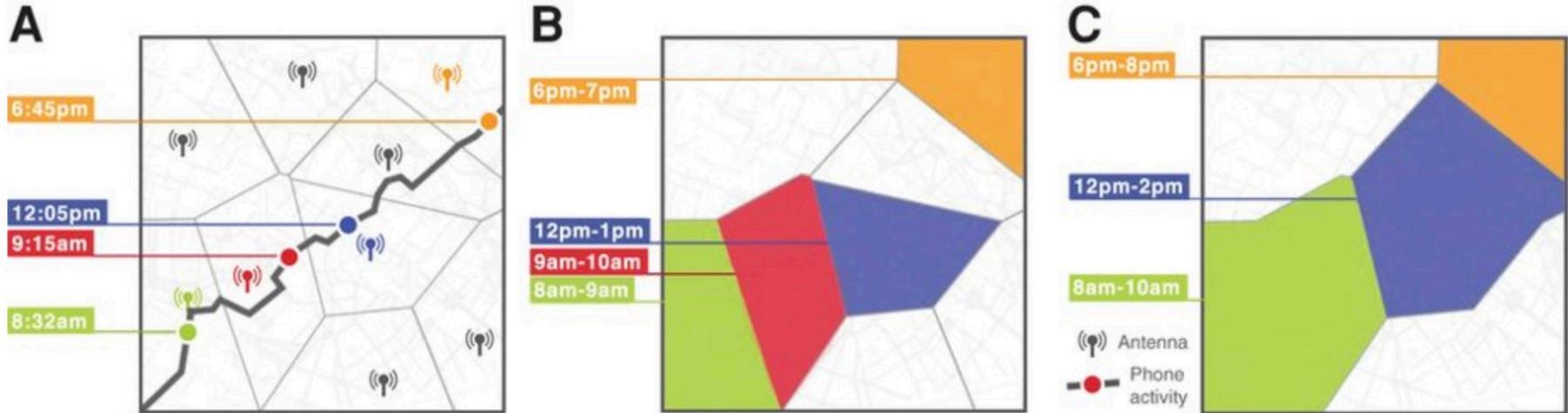
Individual privacy is at risk
under the current PRA with
sharing of detailed trace data

Individual Privacy

- Travel traces are inherently identifiable
- Montjoya, et. al., “Unique in the Crowd”
 - In an hourly dataset (a location every hour)
 - **Any four data points uniquely identify an individual 95 percent of the time**
 - 3 data points = 80% of traces are unique
 - 2 data points = 50% of traces are unique

Montjoya's Findings

- Aggregating spatial resolution has very limited effect on identifiability
 - So aggregating to TAZ or Zip-code does not protect identity



Montjoya's Findings

- Hashing IDs has limited benefit with trace data
 - It is all about the trace
 - Given other data available to data brokers
- So:
 - WiFi based trip segments, transit farecard data, and LBS trace data, are often easily re-identified, even if you remove the identifiers

- In one study, a medical database was successfully combined with a voters list to extract the health record of the governor of Massachusetts

Sweeney, L. k-anonymity: a model for protecting privacy. *Int. J. Uncertainty Fuzziness and Knowledge-Based Systems* **10**, 557–570 (2002)

Public Vs. Private Sector

- Many public sector staff view it as the public's right to have access to the private sector's data
 - “They operate on our infrastructure!”
- But sharing of private data with a government agency makes data releasable, which can have significant harmful repercussions for those businesses
 - And the people those data represent

Private Sector

- Businesses are exposed to risk when sharing data
 - Loss of proprietary information to competitors
 - Loss of control of customer interaction
 - Loss of data value (through public release)
 - Loss of trust from their customers
 - Risk of increased regulatory burden,
 - Decrease in profitability,
 - Increase in liability due to analysis of business practices
 - Expensive legal actions to defend against release of their data

So - Why Would a Business Share Data with Public Sector?

- Required? Part of permit to operate?
- What business purpose (for them) does sharing achieve?
 - Revenue
 - Goodwill
 - Exchange for public data of equal or greater value

How will the data be used?

- Can the private sector trust the public sector to not give away their business secrets?
- How are the data to be used?
 - Public Fear of Missing Out (FOMO) versus
 - Business fear of misuse
 - Will they be released to all who ask?

Data Sharing

- “Public good” is not sufficient reason for the private sector to provide public sector with their data
- So most companies do not share data
 - Unless forced to
 - And if the business risk of sharing is high enough they
 - Go to court
 - Leave the market entirely

Result

- The private sector is typically reluctant to share data with the public sector
- And gets more reluctant as the value of the data increases

Public Records Acts

- Differ from state to state
- Some are more “open” than others
 - In Washington, any record used by a public agency that is not specifically protected in law must be released
 - In California, the state constitution includes privacy protections in the release of documents

Desired Discussion Outcome

- Build a “Coalition of the Willing” to refine Washington’s Public Records Act
 - Make a model PRA for the current world?
- Intent is to guard individual privacy and private business information, while providing for informed public decision making, while retaining overall transparency in government

What is Needed

- Modern refinements to the PRA to address the need to
 - Protect individual privacy given the modern capabilities of data collection systems
 - Better protect trade secret and proprietary business information (make it clear what can be shared/protected)
- While still providing for transparent government
 - Shared summary data
 - Maybe a 3rd party audit process???

Recommendation

- Develop a public-private partnership to support a legal research project to write an update to the PRA

What Is Needed

- Leadership
 - Who will lead the effort?
 - UW Law School can head the technical work
 - Who can lead the political work?
- Resources for
 - Legal effort
 - Outreach to stakeholders
 - Education for the Legislature

Thank You!

Summary

- Define the data to be shared
- Define the uses (and users) that are allowed with that data
- Adopt policies on subject privacy and data security
- Create audit and accountability procedures

PRA History

- Washington State Supreme Court (Lyft, Inc. & Rasier, LLC vs. City of Seattle & Jeff Kirk)
 - “There is no categorical exemption for trade secret under the PRA” (pg 16)
 - The trial court must find that
 - 1) a specific exemption applies, and
 - 2) that disclosure would not be in the public interest, and
 - 3) would substantially and irreparably damage a person or a vital government interest