Access to and use of judicial and other personal data in criminological or criminal law research: Privacy and data protection perspectives

Research Integrity Workshop | 1 February 2016
UGent | Department Criminology, Criminal Law & Social Law
Structure

introduction | preliminary observations

data gathered without consent persons concerned

extension initial data with newly gathered data

• through upgrade from other sources (socio-economic info)
• through interviews

(ex-post) solutions?

Q&A
due respect for privacy & data protection as an integral part of
• any research methodology involving person-related data
• deontological research protocols (legally guaranteed respect for individuals)
privacy and data protection: interrelated, not identical
data protection: processing of personal data
addressing certain misunderstandings within research community
• personal data
  • identified or identifiable persons
  • inclusive of encoded data
• processing
  • even mere collection
  • anonymous reporting insufficient
importance of differentiation between
• access
• processing (including use & reporting)
information security throughout research process
equally important in quantitative and qualitative research
• even higher risk of identifyability in qualitative research (smaller data sets)
additional hurdles for sensitive data
  judicial; also: ethnic, health etc.
equally protective for (non)offenders/victims
access to data from data controllers having different/incompatible purposes
Data gathered without consent persons concerned

for data from judicial files: consent person concerned insufficient access to be granted by judicial data controller having been granted such access does not allow personal data processing

• specifically requested non-anonymous/encoded processing?
• if yes: only allowed for data controller after authorization DPA
• if no: data set violates data protection law + mere ex-post consent person concerned does not alter that (supra)

prior existence data management plan?

• processing, information security and deletion plan?

prior deliberation of need for other than anonymous or encoded data?
Extension initial data with newly gathered data

through upgrade from other sources (socio-economic info)
• unlawful initial data and lack of consent will remain obstacles
• reluctance new data providers to provide, especially if non-encoded
• linking data: by whom? prohibition to link on researchers’ level

through interviews
no direct contacting allowed
• unlawful initial data set
• opt-in requirement
detailed data management/processing plan
• including necessity and proportionality test
• duly motivating possible need for (non-)encoded (vs anonymous) data
• notification DPA for authorisation later use for scientific purposes

choice between
• aggregate existing data set (to avoid later re-identification or link possibility) + opt for encoded data processing + link data through independent official intermediary organisation + seek relevant authorisations from respective DPA sectoral committees + respect prohibition to try and re-identify/link
  • alternative (future): dual layer hashing system (Montrasec)
• collect initial informed written consent (through original data controllers) for processing, including linkage & follow-up through interviews

proper information/data security management (see UGent policies!)

anonymous reporting

deletion non-anonymous (even encoded) data set
• unless recognition by DPA (recommendation informally requested) of necessity (from an integrity perspective) to store safely in dedicated institutional repository with limited access rights
• NB: current clash between open access/right to mine & duty to delete/transferred copyright
Questions | discussion

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www.ircp.org

Contact
Prof. Dr. Gert Vermeulen
t. +32 9 264 69 43
f. +32 9 264 84 94
Gert.Vermeulen@UGent.be

http://www.linkedin.com/pub/gert-vermeulen/68/0/42b

IRCP
Ghent University
Universiteitstraat 4
B – 9000 Ghent