

Asset Protection for Physicians and High-Risk Business Owners

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CHAPTER TWO

How Anyone Can Find Out What You Own

How does a potential plaintiff find out whether you have enough money to make you an attractive lawsuit target? Thanks to the Internet, a lawyer can find out everything he needs to know.

Recent advances in computers and Internet technology allow unprecedented access to your most sensitive personal and financial information. Detailed information describing all of your real estate and business interests, the name of your bank and brokerage firm, your account balances, and your transaction history can be accessed and assembled without your knowledge or permission. Now, anyone can find out what you have and how much you are worth.

These capabilities are a new phenomenon. Until recently, separate bits and pieces of information about your life were scattered in dusty file drawers and county records around the country. Your birth certificate, driving records, insurance file, marriage licenses, and loan applications were maintained or stored in written files, record books, or sometimes the computer at the office where the records were kept. *Information could not be accessed from outside the office where the records were stored.*

If you or somebody else wanted information from your birth certificate, you had to physically go to the records office in the county where you were born and look through the indexed records. An investigator attempting to assemble information about your life had to travel from one county courthouse to another, stand in line, search through library archives and public records, and hope to come up with some useful information. The process of gathering personal information was a laborious and expensive job.

But all of that has changed. The scraps of paper and the written records have been converted into an electronic form which can be stored and searched by a computer. And these computers and databases have been connected through the Internet so that the information in any one computer can be accessed and searched from any other computer. If somebody wants to find out information about you, a single query will hunt through billions of documents stored on thousands of interconnected databases to produce a frighteningly thorough profile of your life. An investigator can now sit in the comfort of his or her office with a computer, a modem, and a cup of coffee in one hand, and in minutes, access everything he or she wants to know about you.

Searching For Your Real Estate

Anyone wishing to put together a complete picture of your assets will first locate and value any property which you own. Until recently, a comprehensive and accurate search such as this was difficult or impossible. Even six or seven years ago there were no statewide or national database listings of real estate owners. Deeds to property were filed in the recorder's office in the county where the property was located. The deed was manually indexed by the clerks. If someone wanted to find out what property you owned, they would have to go to the local recorder's office and look in the Grantee Index under your name. (Grantee is a legal term for the purchaser in a real estate transaction.) That index would show any property, located in that county, which had been deeded to you. Property in a different county would not be found in that index.

An investigator attempting to find all real estate which you owned had the daunting task of searching the index for every county. To make sure that all of your real estate was discovered, an investigator had to search every county in the country. He, or someone working for him, had to personally go to the recorder's office to look up the information. If he had good sources, he might be able to call on the phone and get a clerk to check the records. In either case, it was a time-consuming, expensive, and inefficient process.

About fifteen years ago, we had a client who was trying to collect a \$1 million judgment from a former business partner we'll call Jake. Wisely, Jake was staying out of sight to avoid our subpoena. We wanted to bring him into court for a debtor's examination to make him tell us what he owned. We knew he had substantial assets, but we couldn't find him or any of his property. A search of all of the county real estate records in Los Angeles—where he lived—and each surrounding county showed nothing. Since there was a lot of money involved, we paid thousands of dollars to search every county in California, Nevada, Washington, and Oregon. Still nothing.

One day, after five or six years of basically futile efforts, we received a call from a former secretary who used to work in our office. She had left the firm to open an art gallery in Vail, Colorado. "Are you still looking for that Jake guy?" she asked. "I just saw him on the ski slopes." That was a great tip. We checked the county records and found a house in his name that he had purchased for \$3.6 million in cash. We immediately entered our judgment in Colorado and filed a lien on the property. Jake settled quickly and our client ended up with about \$2.7 million, covering the judgment, interest, and court costs. Jake had figured we would never find the property, and without our lucky break, he would have been right.

It doesn't take luck anymore to find somebody's real estate. Almost every county has computerized its records, and the information has been linked to a national database. Instead of visiting every county recorder or trying to guess where property is located, with a single query, a computer search retrieves all of the real estate records in your name—compiled from every state and county in the country. The report identifies the cost of the property, the loan balance, and the type of property. This information is produced in minutes, and the cost is nominal.

Discovering Your Financial Accounts

After locating your real estate, the investigator will search for your cash. Discovering the existence and details concerning bank accounts and brokerage accounts appears more complex than tracing real estate records. Unlike real estate, a financial account is *supposed* to be a private matter. A banker is someone you should be able to trust with your money. By tradition, the relationship between a bank and a customer implies a level of discretion and confidentiality that can be breached only under extreme circumstances. Although no one expects that their account is secret, in the Swiss style, the common understanding is that in the absence of some type of inquiry from the government or compulsion from a court, the bank will not make your account information available to third parties.

Unfortunately, anyone with expectations of any degree of privacy with respect to a financial account will be dangerously disappointed. Bank and brokerage accounts records are now easily accessible to those who have learned the basic "tricks of the trade." For a modest fee, companies specializing in these services can be hired to perform comprehensive asset searches. A detailed report will list the location, account number, current balance, deposits, and withdrawals for every account that you own. A listing of every check you have written on the account—with the payee and amount—is included in the report. For stock brokerage accounts, a complete transaction history can be obtained with every purchase, sale, and current holding. Monthly credit card transactions and safe deposit boxes can be located if desired.

Information Brokers

The number of companies specializing in providing this information has proliferated as Internet technology makes these searches faster and more efficient. In the business these firms are known as "information brokers." They prepare a detailed financial report about an individual subject at the request of a particular client. Or they may collect a broad list of names which meet specific financial characteristics. For example, a list can be developed with the name of every bank customer, over sixty-five years old, with more than \$50,000 in a certificate of deposit. The information is sold by the company to a marketing firm targeting these individuals for a competing financial product.

There are now hundreds of these information brokers advertising their services on the Internet. An example of the services offered and the fees is provided on figure 2-1.

You can see from this information that the services are comprehensive and the fees are modest. For less than \$1,000, a fairly complete search will be performed—including real estate holdings, bank and brokerage accounts, and safe deposit boxes. A number of the firms advertising on the Web declare, "No find. No fee." If they fail to locate accounts in the search, for whatever reason, they do not charge for the service.

At these prices it is also clear that there is not a significant amount of time or labor involved in developing the reports. It is not necessary to bribe bank officials or employees or to send operatives on covert missions to steal protected bank files. An experienced investigator can gather the requested information with a computer and a telephone within a few minutes or hours.

In connection with our own legal practice, we decided to invest some money and create several tests to see what the investigators could find. We were refining our own strategies for protecting financial privacy and wanted to see exactly what we were up against. We wanted to know the most advanced techniques the investigators used and how deeply into a given structure they could penetrate.

We selected a close friend of ours, Steve, to be the subject of the investigation. He agreed, but we are not using his real name. Steve is a good subject because he has financial accounts, properties, and business interests which range from straightforward to fairly complex. We were interested in seeing which assets could be found. Here is the description of what he owns.

1. Five single family rental houses in California, Texas, and Arizona.
2. Joint checking account with his wife at a California bank.
3. Business checking account—with his signature only—in California.
4. Brokerage accounts with stocks and mutual funds at two different firms.
5. Account in the name of a Nevada corporation at a bank in Las Vegas. Steve is the owner of the company and one of three signatories on the account.

To perform this search, we chose a firm at random from several hundred advertising "Financial Investigations" on the Web. We told the investigator, a woman named Julia, that one of our clients was considering filing a lawsuit against Steve and we wanted to know beforehand exactly what he owned. Julia said she did these type of searches for many lawyers and helpfully suggested that we do a national search of real estate, bank accounts, stocks, and mutual funds for a fee of \$600. We supplied the name of the subject—(Steve) and his Social Security number. If we had not known the Social Security number, the firm would have provided it for an extra \$35. We also asked for the location of any safe deposit boxes.

Three days later we received a faxed report from Julia which contained the following information:

1. Steve's full legal name and the names of his wife and two children.
2. His current and previous addresses and place of employment.
3. Each of the five real estate properties was listed with street address, legal description, purchase price, loan balance, and estimated value.
4. The joint account and business checking account were identified by account number, bank branch, and current balance. An additional account was located which Steve had forgotten he had; it contained \$45.67. We were particularly impressed because this account was in Maine—Steve had opened it when vacationing there ten years earlier—and there had been no activity since that time.
5. Both of the brokerage accounts were listed. The report contained all of the stocks and mutual funds with the account balance and deposits for the month. Julia noted that a list of all purchases and sales for the year could be obtained for an additional \$95.
6. Similarly, the Nevada corporation did nothing to shield the ownership of the bank account. Complete details, with the name of each signatory, was provided. We were supplied, without charge, the names and addresses of the corporate officers and directors.
7. As you might expect from the results so far, Steve's safe deposit box was located, with box number, bank, and branch. To the best of our knowledge, the contents of the box were not revealed.

These results were interesting to us. Even though the accounts were held in different forms and at different financial institutions, each had been discovered. In subsequent tests using ourselves and willing friends as guinea pigs, a total of fourteen out of sixteen possible accounts were accurately located.

For a story in *Parade Magazine*, author Peter Maas researched the availability of personal financial information and had an experience similar to ours. He retained an investigation firm to see what facts about himself could be uncovered. He gave the company forty-eight hours to produce telephone records for an unlisted phone number and bank records for each account he owned, in his name or with his wife. Within the indicated time, the company produced all three unlisted telephone numbers, together with a complete list of all of the toll calls made from each line. The financial accounts were also quickly discovered. "All my bank-account information—the account numbers, the banks involved, balances, and deposits for the previous month—was disturbingly accurate," Maas reported.

A recent front page article in the *Wall Street Journal* detailed the ease with which private investigators discovered accurate bank balances for customer accounts at financial institutions throughout the country—including the bank giants Fleet Financial, BankAmerica Corp., Bank of New York Co., Chase Manhattan Corp., Citibank, Great Western (now Washington Mutual), and PNC Bank Corp.

The article highlighted the stories of several individuals who were dismayed to learn that their accounts had been located and the balances disclosed—without their knowledge. The case of Dale Ohmart, a New Hampshire minister, was particularly striking. After Ohmart was involved in a minor accident, a local attorney, Frank Federico, acting on behalf of his client, retained an investigator to search for Ohmart's bank accounts. As quoted in the article, Federico said he hired the investigation firm because "we don't like to go after people individually unless they have liquid assets." Within a short time, the investigator provided Federico with account numbers and balances on four of Ohmart's accounts at Fleet Financial. Based upon the small balances in the account, Federico chose not to pursue the case. The article concludes, "Mr. Ohmart, age thirty-nine, didn't know that his account confidentiality had been violated until he was contacted for this article. He now says that he is considering closing his Fleet Financial accounts, and asks, 'How in the world can I feel that the relationship I have with the bank is secure or that my own assets are secure?'"

How They Find Your Accounts

There are three basic tools that investigators use to locate bank and brokerage accounts:

1. Sources.
2. Pretext.
3. Individual reference services, also known as "look-ups" or "locators."

As we know from our own experience, in most cases, one or the other of these tactics will produce the desired information.

Sources

The term "source" refers to an individual with access to the records of the financial institution. Generally this is a person who works for a particular firm and is willing to supply information about customer accounts. The source can be any employee with access to a computer terminal. All customer account records of the firm can usually be accessed from any terminal. By typing in the customer name, all account records can be located. The source usually receives a monthly salary or a per transaction fee. An investigator working on a case calls his source at Firm A—one of the largest brokerage firms—and says do you have any accounts for John Doe? If yes, he gets a list of the account numbers with whatever other information was requested by the client. If the answer is no, he goes down the list to Firm B and so on. Ninety-five percent of all brokerage accounts are held by the ten largest firms so most of the time the investigator will be successful quickly.

These networks of sources belong to a few well-heeled investigation companies. It requires a large investment and a steady flow of business to develop and maintain a sizable organization. A lot of energy and money is devoted to keeping these networks in place and operating smoothly. Most private investigation firms are small, one person operations, and they don't have the capital to create their own networks. Instead, they farm out the work to the big companies for a fee.

For example, you call Sam's Detective Agency and ask for a brokerage account search on your father-in-law, Arnie, which will cost \$400. Sam doesn't have enough money or business to build his own source network, so he calls one of the handful of large companies who specialize in these searches. Sam pays \$300 to X Company, and a clerk there simultaneously e-mails the request to X Company's contacts at more than 1,200 brokerage firms. Any firm that you can think of is covered by this list. Each source performs a quick computer check to see if Arnie is a customer and e-mails a positive or negative response. The turnaround time for all 1,200 firms can be less than an hour.

Sam gets the results that he asked for and delivers to you the finished report showing that Arnie has a stock brokerage account with more than \$1 million. You don't know how Sam did it, and he won't tell you. He would not want you to bypass him and go directly to the information wholesaler. At the same time, Sam doesn't know who X Company's sources are—that's its secret. X Company would not want Sam to go directly to a source for information so it closely guards its valuable names. It is a sound business model that works efficiently for all of the parties involved. Everyone is satisfied—except, of course, Arnie.

Sources are also useful in acquiring telephone records from the phone companies which provide a wealth of detailed private information in a single complete package. Once the investigator has obtained a list of your toll calls, he uses a *reverse directory* to look up the names and addresses on the other end of each telephone call. Telephone records for a business or even some individuals can involve thousands of listed calls. Rather than calling each number to see who it belongs to, a reverse directory CD-rom or Internet service can be used to list the identifying information in seconds.

Financial accounts are often located simply by a review of the list of names produced by the reverse directory. If you have called your bank on the telephone or conducted online banking from your computer modem, your telephone records provide an excellent trail leading directly to the bank's door. Account information is then determined by a source at the bank, or by pretext, using your identifying information.

Pretext

If Sam does not want to pay out a big chunk of his fee to X Company, he has to use a different strategy to find the information. The tactic is called *pretext*. Posing as Arnie, over the Internet or the telephone, he will attempt to gather the necessary account information.

Here's how the pretext scheme works: When you hired Sam to investigate Arnie's assets, Sam requested Arnie's full name and address. With this information, he then located Arnie's Social Security number. This is the key to all asset searches. It unlocks the door to almost every other piece of information, and it's easily accessible.

It is easier to find a Social Security number than an address or telephone number. Almost everyone has applied for credit and has provided their Social Security number on the application. The information on the applications are used to create databases, which are available for marketing and commercial purposes. For example, every individual credit report maintained by the three national credit agencies—Trans Union, Equifax, and Experian—contains a "credit header," which is the portion of the report with the name, aliases, birth date, current and prior addresses, telephone number, and Social Security number. Credit headers may be sold to services that compile information databases on millions of people. In a promotional brochure one service, People Finder, claims that its database contains credit header information on "160 million individuals, 92 million households, 71 million telephone numbers, and 40 million deceased records."

Sam maintains a subscription to several database suppliers, and he finds Arnie's Social Security number, mother's maiden name, and telephone numbers in a few minutes.

Sam then calls the customer service representatives at the firms, pretending that he is Arnie. The first task is simply to locate the accounts and the account number. One clever ruse is the *wire transfer ploy*. He may say, "This is Arnie Smith, and I would like to wire transfer \$100,000 into my account. Can you please give me the proper routing instructions?"

The helpful employee responds, "Certainly, Mr. Smith, let me just find your account here." If she can't find the account in the computer, she'll say, "I'm sorry, sir, but there must be some mistake. We can't find your account. Do you have the account number handy?" If she does find the account, she may ask for some verifying information such as date or place of birth or mother's maiden name. But Sam is prepared and he already has the right answer. She will then provide Sam with the routing information for the wire transfer, which will include the account number. Once Sam has the account number, that's the end of the ball game. He can now call and get whatever information he needs.

Although the telephone pretext strategy works well for brokerage firms, which are limited in number, these time-consuming techniques cannot be used when the requested search covers a large number of banks. It is not possible for the investigator to personally telephone even a fraction of the banks where the accounts might be located. And it is not cost effective to hire a room full of callers when the total fee is only a few hundred dollars.

Instead, Sam can use the high tech solution and can send a computer message to thousands of banks simultaneously—again posing as Arnie. Most banks now provide computerized responses to customer inquiries, and when the proper identifying data is furnished, the requested information can be elicited. Online Internet searches, in this manner, allow the investigator to cover banks throughout the country and to obtain account information quickly and inexpensively.

Pretext is often an effective technique for discovering account information even at supposedly safe offshore banks. An attorney friend of ours told us the story of a client who had stashed \$2 million in an account at a Caribbean bank, in preparation for a nasty divorce. For a variety of reasons, there was no trail from the U.S. showing the transfer to the foreign bank so nothing in his banking records provided a tip-off for the wife. But her private investigator secured the husband's telephone records—ran a reverse directory check on the numbers—and found calls to a prominent overseas bank. Then, using a pretext strategy similar to the wire transfer ruse, he learned the account balance from the bank itself. Before this evidence could be presented to the judge—creating perjury and potential tax problems—the husband paid up—and far more than \$2 million.

Many of the offshore banks—despite their purported secrecy—are as vulnerable to pretext calls as their American counterparts are. When the existence of the account is discovered through telephone records or other documents, experienced investigators will often be successful in obtaining the details that they are seeking.

Individual Reference Services

The booming demand for personal information has spawned a new multibillion dollar industry known as *individual reference services*—we'll call them *look-ups* for our discussion. Look-ups employ thousands of people, researching and inputting data, to supply personal information about individuals to attorneys, marketers, credit suppliers, financial institutions, and investigators. These companies compete to assemble ever larger and more comprehensive databases of personal information.

Rapid innovation creates awesomely powerful search techniques, combining and sorting information from multiple separate databases to produce a comprehensive personal information report. Instead of different searches for each important piece of data, a single search now presents a compilation of information from different sources. One look-up service claims that it takes any individual name and runs it through a thousand separate computer databases with more than *100 billion* stored records. According to the company, the average report length is 100 pages.

One hundred pages is a lot of information about you and probably covers just about everything you wouldn't want someone else to know. Besides the commonly available records of Social Security number, date of birth, and mother's maiden name, additional information also may include: place of birth, names and ages of family members and neighbors, schools attended, telephone numbers (listed and unlisted), employment information (past and present), physical characteristics, licenses held, voter registration information, driver's license number, automobile registration, personal identification numbers, association membership, census information associated with the addresses, and asset ownership. A newspaper archives search for any articles with your name may be included in the report.

The information compiled by the look-up services is derived from three principle sources:

1. Information which you have supplied.
2. Information from the public record.
3. Information from proprietary sources.

Voluntary Information

Much of the data about you which is available has been voluntarily furnished by you in connection with a service or a product that you purchased. What you probably didn't know was that the information would be made available for purposes other than those which you intended. For example, a mortgage loan application is a very sensitive document. It contains almost every detail of your private financial life, including tax returns and bank account statements. If the information from a mortgage application or other credit application is made available by employees at the lender or by the institution itself for marketing purposes, the material would be integrated into your personal file on the databases forever.

Unlike the credit reporting bureaus that are required by the Fair Credit Reporting Act to furnish you with a copy of your credit report under certain conditions and to correct errors on the report, the look-up services have no such obligations. The subject of a look-up search has no right to see or correct the information presented about him. You may be turned down for employment or insurance or some other service based on inaccurate information received from the look-up service without your knowledge. Unless you are able to subscribe to the particular service or obtain a report, you may never know the extent or the accuracy of the information presented about you.

Although not as comprehensive as the mortgage application, the totality of your subscriptions, warranty cards, purchases, survey responses, and other credit applications provides enough information about you to satisfy even the most diligent investigations. You have voluntarily provided your telephone numbers (listed and unlisted), your checking account number, credit cards, employment, and identifying information on a regular basis throughout your adult life. This information has been stored, assembled, merged, and regularly updated to provide a detailed picture of your personal and financial life.

Information from Public Records

The public records maintained by all levels of government are another rich source of information about you. Ownership of real estate, marriages and divorces, court records of civil and criminal cases, birth

