COMMENTS

The State's Interest in Adoption and Washington's Sealed Records Policy

Increasing demand among adopted children to obtain access to their adoption records\(^1\) has precipitated several constitutional challenges to the state sealed records statutes. Although a minority of states currently allow adult\(^2\) adoptees to inspect their original birth certificates and court records, the majority of states, including Washington, have a sealed records policy preventing access to such information unless the adoptee shows good cause\(^3\) for their release.\(^4\) In challenging the constitutional-

1. Adoptees’ demands resulted in the formation of both national and local organizations designed to change the sealed records policy prevalent in many states to a system of unrestricted access, at least once the adoptee reaches the age of majority. One such national organization is the “Adoptee’s Liberty Movement Association” (ALMA). Adoptees in the state of Washington have formed the Washington Adoptee’s Rights Movement with similar objectives.


3. Although there is no clear statutory definition of the good cause requirement, some courts have interpreted it as requiring the adoptee’s interests be balanced against any conflicting rights affected by disclosure. \textit{See} text accompanying notes 21-27 and 180-190 \textit{infra}.

ity of such statutes, adoptees argue that the state’s refusal to disclose such records violates their constitutional right to privacy, equal protection of the laws, and rights under the thirteenth or ninth

1969); GA. CODE ANN. § 74-419 (1973) (sealed with good cause requirement); HAWAI REV. STAT. § 578-15 (1976); IDAHO CODE § 39-218 (1977); ILL. ANN. STAT. ch. 111 1/2, § 73-17(4) (Smith-Hurd 1977); IND. CODE ANN. § 31-3-1-5-[3-119] (Burns Supp. 1979); IOWA CODE ANN. § 600.9 (West Supp. 1979-80) (includes a provision against black market practices); KAN. STAT. ANN. § 65-2423 (Supp. 1978) (records available to adoptee upon reaching age of majority); KY. REV. STAT. ch. 199.570(2) (1977); LA. REV. STAT. ANN. § 40.81 (West Supp. 1979) (Those adopted prior to 1938 entitled to inspect adoption records, with sealed records in effect thereafter, although a judicial interpretation states that this sealing of records is not intended to be effective against the adoptee. This interpretation apparently contravenes the sealing of the records in effect after 1938. See, e.g., Chambers v. Parker, 349 So. 2d 424 (La. App.), cert. denied, 351 So. 2d 170 (La. 1977)); ME. REV. STAT. ANN. tit. 19, § 534 (1965); MD. ANN. CODE art. 43, § 19(4) (1971); MASS. GEN. LAWS ANN. ch. 210, § 5c (West 1979) (a 1972 amendment eliminated the exception which prior to 1972 enabled adopting parents, adoptees, and persons opposing petition access to the records without a court order); MICH. STAT. ANN. § 710.67 (Supp. 1979); MINN. STAT. § 259.31 (1980); MISS. CODE ANN. § 93-17-25 (1973) (available to officers of the court, including attorneys, despite the confidential nature of the records); MO. REV. STAT. § 453.120 (1978); MONT. REV. CODES ANN. § 61-213 (Supp. 1977); Neb. REV. STAT. § 43-113 (1978); NEV. REV. STAT. § 127.140(2) (1979); N.H. REV. STAT. ANN. § 170-B:19 (1977); N.J. STAT. ANN. § 26.8-40.1 (West Supp. 1979); N.M. STAT. ANN. § 40-7-16(A) (1978); N.Y. DOM. REL. LAW § 114 (McKinney 1977); N.C. GEN. STAT. §§ 48-25, 48-29(b) (Supp. 1977); N.D. CENT. CODE § 14-15-16 (Supp. 1979) (nonidentifying information available to the adoptive parents upon request at time of placement or upon written request of adult adoptee; adoptees reaching age 21 may request identifying information which will be disclosed only upon consent of genetic parents, open records policy effective after July, 1979); OKLA. STAT. ANN. tit. 10, § 60.1(2) (West Supp. 1979) (irregular phrasing of statute interpreted to be a sealed records law); OR. REV. STAT. §§ 432.415(4), 420 (1979); PA. STAT. ANN. tit. 1, §§ 505-507 (Purdon Supp. 1979); R.I. GEN. LAWS § 23-3-15(b)(1) (1979); S.C. CODE § 15-45-140 (1977); S.D. COMP. LAWS ANN. § 25-6-15 (1976) (access to adoptee upon maturity); TENN. CODE ANN. §§ 36-130, 132 (1977); TEX. REV. CIV. STAT. ANN. art. 4477, rule 47(a) (Vernon Supp. 1980); UTAH CODE ANN. § 26-15-16 (1976); VT. STAT. ANN. tit. 15, § 452 (1974); VA. CODE § 63.1-236 (1980) (Adoptee 18 years of age or older may submit request for information about biological parent or, if under 18, upon order of the court with good cause shown. In the court proceeding the effect of the release on the minor child, adoptive parents, and biological parents must be considered); WASH. REV. CODE §§ 26.32.120(2), .36.030 (1979); W. VA. CODE § 48-4-4 (1980); WIS. STAT. ANN. § 48.93 (West Supp. 1980); WYO. STAT. § 1-22-104 (1977).

5. See, e.g., Note, The Adult Adoptee’s Constitutional Right to Know His Origins, 48 S. CAL. L. REV. 1196, 1207-10 (1975) [hereinafter cited as Adoptee’s Right to Know] (the adoptee’s right to privacy is said to be within the realm of “marriage, procreation, contraception, family relationship, and child rearing and education” mentioned in Roe v. Wade, 410 U.S. 113 (1973), as protected areas of privacy). See generally Note, Due Process Privacy and the Path of Progress, 1979 U. ILL. L. F. 469.


7. See, e.g., Comment, A Reasonable Approach to the Adoptee’s Sealed Records
amendment.\textsuperscript{8} Nevertheless, courts upholding the constitutionality of the sealed records statutes typically conclude that the state's interest in the adoption process and the privacy interests of the natural and adoptive parents outweigh the adoptees' rights to the information.\textsuperscript{9}

Washington's adoption statute protects not only the adoptee, but all participants in the adoption process.\textsuperscript{10} Requiring the adoptee to show "good cause" prior to releasing adoption information protects non-adoptee participants. Although there is no legislative definition\textsuperscript{11} of good cause, the Washington Court of Appeals requires a judicial balancing of conflicting interests prior to granting the adoptee identifying information.\textsuperscript{12} Because the adoption process involves balancing several potentially conflicting interests,\textsuperscript{13} the adoptee's right to access cannot be abso-


8. In ALMA Soc'y v. Mellon, 601 F.2d 1225 (2d Cir.), cert. denied, 444 U.S. 995 (1979), the plaintiffs argued that the adoption statute, denying access to the adoptee's biological parents, was a manifestation of the second incident of slavery, i.e., abolition of the parental relation, and, therefore, came within thirteenth amendment protection. For a discussion of the ninth amendment or unenumerated rights concept, see Privacy Rights of Natural Parent, supra note 7, at 74-75; Note, The Adoptee's Right to Know His Natural Heritage, 19 N.Y.L.F. 137, 150-54 (1973).


There is no precise definition of 'good cause' either by statute or by case law, rather, the judge must make this determination on a case-by-case basis. Flexibility is desirable in this sensitive area. The court is vested with wide discretion in adoption matters, and its orders and judgments should not be disturbed on appeal except for very cogent reasons.

Id. at 810-11, 586 P.2d at 1206.

12. Id. In upholding the good cause requirement of statutes similar to Washington's, courts have concluded that an examination of facts of each case and the balancing approach best effectuated the statute's attempt to protect the various individual rights involved. See ALMA Soc'y v. Mellon, 601 F.2d 1225 (2d Cir.), cert. denied, 444 U.S. 995 (1979); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 372 A.2d 646 (1977).

13. Adoptees' interests include the asserted right to privacy, right of access to information under the first amendment, right to equal protection of the laws under the fourteenth amendment and ninth amendment or unenumerated rights. The adopting parent's interests include the protection assured their family unit by the adoption statute
lute. Although the current statute appropriately protects the conflicting interests, the sealed records policy may need precise tailoring to accommodate adoptees' interests, such as providing nonidentifying information regarding the adoptee's biological heritage. Nevertheless, the statute requires judicial balancing of competing interests and because the good cause determination provides for such balancing, it is the best method of protecting the varied constitutional and statutory rights involved in the adoption process.

After discussing the legal effect of the adoption decree and the purpose of Washington's adoption statute, this comment will analyze the competing interests of the adoptee, the biological parents, the adoptive parents, and the state. This article will also discuss the legislative proposal in Washington attempting to abolish the good cause requirement. Finally, this article concludes the sealed records requirement is constitutionally sound and despite the need for further legislative articulation, the good cause balancing approach is the most suitable method for protecting the conflicting rights and interests inherent in the adoption process.

In Washington, as in most states, an adoption decree divests the natural parents of "all legal rights and obligations in respect to the child." Concomitantly, the child relinquishes all legal rights and is relieved of all obligations of "obedience and maintenance" to the biological parents. The adopted child becomes the legal heir of the adopting parent, entitling him to all rights and privileges, including inheritance. The biological parent retains only the right to privacy, a right protected by the entire structure of the adoption statute. The Washington legislature, in seeking to protect the rights of adopted children, adoptive

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14. See text accompanying notes 183-192 infra.
16. Id.
17. The use of the pronoun "him" throughout the text is not intended to refer solely to the male gender.
19. See WASH. REV. CODE §§ 26.26.030, .32.120(2), .32.150, .36.050 (1979) (these recent statutory amendments reiterate the need for confidentiality and restrict the adoptee's access to identifying information).
parents, biological parents, and the state,\textsuperscript{20} enacted a sealed records statute providing: "Unless otherwise requested by the adoptee,\textsuperscript{21} all records of any proceeding hereunder shall be sealed and shall not be thereafter open to inspection by any person except upon order of the court for good cause shown; and thereafter shall be again sealed as before."\textsuperscript{22} Thus, this statute effectively bars the adoptee’s access to information regarding his original birth certificate,\textsuperscript{23} court records concerning the adoption decree,\textsuperscript{24} and agency records identifying the adoptee’s biological parents,\textsuperscript{25} unless the adoptee can demonstrate good cause. The courts, however, have defined good cause narrowly\textsuperscript{26} and adoption agencies tend to be equally stringent.\textsuperscript{27} Because of the

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\item 20. See, e.g., In re Reinius, 55 Wash. 2d 117, 346 P.2d 672 (1959).
\item 21. Although ambiguous the phrase "unless otherwise requested by the adoptee" could mean only the adoptee will have access to confidential records. Legislative history reveals a change of the 1943 term "adopter" to "adopted" in the current version. The change was apparently part of a general amendment to the act in 1955, but in a statement to the House the sponsoring senators made no mention of the change or any indication the change was intentional. See WASH. HOUSE J., 34th Leg. 1104 (1955). Because the meaning of the particular wording here is unwitting, one can rely on several other sections of the statute to conclude the legislature intended adoption records remain confidential, even from the adoptee. See WASH. REV. CODE §§ 26.32.030, .32.120(2), .36.050 (1979).
\item 22. WASH. REV. CODE § 26.32.150 (1979). Washington’s provision is similar to a majority of other states’ provisions. See note 2 supra. Also similar to Washington’s act is the UNIFORM ADOPTION ACT § 13(2) (1971), which states:

All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except on order of the judge of the court in which the decree of adoption was entered for good cause shown.
\item 23. See WASH. REV. CODE § 26.32.120 (1979).
\item 24. Id. § 26.32.150.
\item 25. See id. § 26.36.030.
\item 26. Survey results indicate many Washington Superior Court judges consider an adoptee’s psychological need to know insufficient, although the judges are not in agreement as to what “good cause” requires. This disagreement has caused some disparity in the application of the law, from county, to county and may subject the good cause requirement to legislative attack in the near future. See notes 166-68 & 184 infra. See also Moschera v. Catholic Homes Bureau, 42 N.Y.2d 260, 366 N.E.2d 824, 397 N.Y.S.2d 735 (1977).
\item 27. Although agency records are not usually covered by sealed record statutes,
extreme difficulty of showing good cause, adoptees have sought access to their adoption records by challenging the constitutionality of sealed records statutes.

Recently, adoptees have argued that sealed record statutes unconstitutionally impair adoptees’ privacy rights to personal autonomy, infringe on their first amendment right of access to information and deny adoptees equal protection under the law. Perhaps the most significant judicial directive on the sealed records controversy was articulated in ALMA Society v. Mellon,28 where plaintiffs challenged the constitutionality of the New York sealed records statute, arguing that access to adoption records should not require any showing of good cause whatsoever. Plaintiffs attacked the statute on three grounds. First, they claimed the adoptees’ interest in learning their natural parents’ identity is a fundamental right under due process, privacy analysis,29 because lack of access can result in serious psychological trauma, medical misdiagnosis for lack of medical history, a danger of unwitting incest, and a crisis in religious identity constituting an impairment of religious freedom.30 Second, they argued that adult adoptees constitute a suspect or “quasi-suspect” class, requiring a strict or intermediate level scrutiny,

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most agencies treat them as though they were. A recent survey indicated that over 99% of [the] agencies [responding] will not give the adult adoptee the name of the biological parents without the latter’s consent, although a few will undertake a search under certain circumstances.

Klibanoff, Genealogical Information in Adoption: The Adoptee’s Quest and the Law, 11 Fam. L.Q. 185, 188-89 (1977) (footnotes omitted). The author also notes the records may not contain comprehensive genealogical information. Id. Perhaps one explanation for adoption agencies’ reluctance to disclose adoption records lies in their contractual obligations with the birth and adopting parents, agreeing to keep such information strictly confidential. Such “guarantees” of anonymity were made by 90% of the agencies responding to a Child Welfare League survey conducted in 1976. Child Welfare League of America, The Sealed Adoption Record Controversy: Report of a Survey of Agency Policy, Practice and Opinions 6 (1976).

Washington statutes, contrary to most, require that both adoption agency records and court records be sealed. Wash. Rev. Code § 26.36.030 (1979). Most sealed record statutes do not explicitly cover the records retained by adoption agencies.

29. The Constitution provides that
   [n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
U.S. Const. amend. XIV, § 1.
30. Because adoptees are unable to practice the religion of their biological parents, the plaintiffs claim this constitutes an impairment of religious freedom. ALMA Soc’y v. Mellon, 601 F.2d 1225, 1229 (2d Cir.), cert. denied, 444 U.S. 995 (1979).
respectively. Finally, they urged the court to apply thirteenth amendment analysis maintaining that the sealing of adoption records constitutes the second incident of slavery in violation of absolute thirteenth amendment rights. In Mills v. Atlantic City Department of Vital Statistics and Matter of Roger B., the plaintiffs contended the sealed records law abridged their constitutionally protected right to privacy and their first amendment right to receive important information. As in Mellon, they argued the state also violated the fourteenth amendment by denying adoptees equal protection of the laws. The Washington decision of In Re Sage, also involving an equal protection challenge to the sealed records law, was Washington's first recorded challenge to the sealed records policy. The adoptee in Sage sought disclosure under Washington's Public Disclosure law. In upholding the constitutionality of the good cause requirement, all four courts recognized the varied interests adoption statutes protect, thereby indicating that adoptees'

31. Id. at 1230. The plaintiffs in Mellon relied on Trimble v. Gordon, 420 U.S. 762, 767 (1977), in which the Supreme Court found illegitimacy "analogous to" a suspect class. Plaintiffs argued that since the sealed records laws treated them worse than illegitimates, strict scrutiny was applicable. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1230 n. 7 (2d Cir.) cert. denied, 444 U.S. 995 (1979). If strict scrutiny was inapplicable, plaintiffs asserted that the adoptive classification discriminated because most adoptees are illegitimates and therefore the statute is subject to the intermediate level of review as applied in Trimble. Id. at 1233.

32. Borrowing from a speech of Senator James Harlan of Iowa on April 6, 1864, plaintiffs claimed that the second incident of slavery is the abolition of the parental relation. Id. at 1237. The court rejected this argument, stating that the Supreme Court had interpreted the thirteenth amendment as solely prohibiting slavery, not the various incidents of slavery articulated by courts in defining the concept of slavery itself. Id. at 1237-38.

Adoptees' assertions that they have thirteenth and ninth amendment rights will not be given textual treatment because neither creates strong arguments for the alleged denial of constitutional rights.

33. Plaintiffs claimed that thirteenth amendment rights are absolute and not subject to balancing. Id. at 1231.


38. Id. at 811, 586 P.2d at 1206. The public disclosure act is codified at WASH. REV. CODE §§ 42.17.010-045 (1979).

rights are not absolute.\textsuperscript{40} Although all four courts refused to apply strict scrutiny,\textsuperscript{41} the Mellon and Mills courts held that even if the adoptees' interests could be classified as fundamental or adoptees treated as a suspect class, the state's interest in the adoption process is compelling\textsuperscript{42} and, thus, the sealed records statutes did not violate adoptees' asserted constitutional claims.

In arguing their constitutional privacy rights are violated, rights that have been judicially recognized as implicit within constitutional protections,\textsuperscript{48} adoptees assert that adoption information retained by the state falls within certain "zones" of privacy. Members of the Supreme Court have implicated this privacy interest in activities related to: marriage,\textsuperscript{44} procreation,\textsuperscript{45} contraception,\textsuperscript{46} child rearing\textsuperscript{47} and education.\textsuperscript{48} The Court in

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  \item 41. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1233-34 (2d Cir.), cert. denied, 444 U.S. 995 (1979); In re Roger B., 85 Ill. App. 3d 1064, 1068-69, 407 N.E.2d 884, 888 (1980); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 311, 372 A.2d 646, 651, 653 (1977); In re Sage, 21 Wash. App. 803, 812-13, 586 P.2d 1201, 1206 (1978). But see 85 Ill. App. 3d at 1070-75, 407 N.E.2d at 889-93 (dissenting opinion). Justice Rizzi, in his dissenting opinion, concluded that the sealed records policy was unconstitutional as to adult adoptees. He stated "an adult's decision as to whether he wishes to know the identity of his genetic parents is a private and personal decision which he has a fundamental right to make for himself." Id. at 1070, 407 N.E.2d at 889. According to Justice Rizzi, the adoptee's right to know the identity of his biological parents is analogous to rights previously designated as fundamental, such as matters regarding procreation, contraception, child rearing, marriage and family relationships. Id. at 1071, 407 N.E.2d at 889-90. While conceding that despite the fundamental nature of the right, minor adoptees are subject to the limitations confidentiality provides, Justice Rizzi concluded the state's interest terminates upon the adoptee's maturity. Id. at 1073, 407 N.E.2d at 891. His reasoning indicates the state's interest must be compelling during the child's minority in order to impede this "fundamental right." In previous cases where the court invalidated legislation affecting proclaimed fundamental rights, the state's interest was said to be inconsequential or irrational. It is difficult to conclude the protection provided various privacy rights by the statute constitutes compelling state interest, yet must be extinguished upon the adoptee's maturity.
  \item 43. Although the Constitution does not explicitly mention privacy rights, members of the Supreme Court have found a right emanates from the first amendment, Stanley v. Georgia, 394 U.S. 557, 564 (1969); the fourth amendment, Terry v. Ohio, 392 U.S. 1, 8-9 (1968); and, most recently, from the fourteenth amendment, Roe v. Wade, 410 U.S. 113, 153 (1973) (plurality opinion).
  \item 44. Loving v. Virginia, 388 U.S. 1, 7-12 (1967).
  \item 46. Roe v. Wade, 410 U.S. 113, 147-64 (1973) (plurality opinion); Eisenstadt v.
Whalen v. Roe, 49 hinted that an informational due process privacy right exists, 50 encompassing an individual's interest in avoiding the disclosure of personal matters. 51 Adoptees' strongest argument combines the goal of informational privacy with the liberty concept of the fourteenth amendment. 52 First, because informational privacy involves the right of personal autonomy, the state's retention of information regarding biological heritage is said to infringe on the adoptee's right of "personhood." 53 Second, withholding adoption information from adoptees violates their liberty rights under the fourteenth amendment by inhibiting the adoptees' growth in mind, spirit, and personal development. 54 Although similar, the first argument essentially relates to the state's data-gathering activities and information dissemination to persons other than the adoptee in violation of due process privacy rights; the second criticizes the state's refusal to disclose the information to the adoptee as violating the liberty concept encompassed in the fourteenth amendment. To prevail under either argument, the court must deem the alleged right to be fundamental in nature 55 so as to be found within the protected zones of privacy recognized by the Supreme Court. 56

The interest must be found within the wording of the Constitution 57 to be classified as fundamental and therefore constitutionally protected. Courts have not explicitly found an

Baird, 405 U.S. 438, 452-55 (1972) (plurality opinion).
47. Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (the Court nevertheless upheld state intrusion).
50. See Note, Due Process Privacy and the Path of Progress, 1979 U. Ill. L.F. 469, 526-29.
52. See Note, supra note 50, at 526-29.
53. Judge Craven of the Fourth Circuit adopted the term "personhood", used as an alternative to "autonomy" or "privacy." See Craven, Personhood: The Right to be Left Alone, 1976 DUKE L.J. 699, 702.
54. See Note, supra note 50, at 528.
57. San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) (plurality opinion) (when determining whether an interest is "fundamental", look to see whether the right asserted is implicitly or explicitly guaranteed by the Constitution rather than making comparisons of relative societal significance).
adoptee's right to information in the Constitution itself, nor within the 'zones' of privacy previously recognized.\textsuperscript{58} It is doubtful adoptees could successfully argue their interest comes within the previously recognized privacy interest in family relationships,\textsuperscript{69} not only because through the adoption process, the court severs the adoptee's family relationships with his biological parents and confers the status of parent and family solely upon the adoptive relationship but also because traditionally the "family relationship interest" was more accurately the privacy interest of the parents alone to raise and nurture their children as they deemed fit.\textsuperscript{60} The adopting parents, accordingly, benefit through this privacy interest.

Even if adoptees can support characterization of their privacy right as fundamental, courts recognize that the right to privacy is not absolute.\textsuperscript{61} The recognition of a right to informational privacy also applies to adoptive and biological parents, while the confidentiality of the records is thought to protect the adoptee as well.\textsuperscript{62} The adoptee's claim to privacy suffers from three weaknesses; first, an adoptee's right of privacy has not been found to fall within the previously recognized zones of privacy\textsuperscript{63} nor is it a fundamental right;\textsuperscript{64} secondly, the adoptee's privacy rights are no more important than conflicting privacy interests of the adoptive or biological parents; and, finally, the State's interest in maintaining the confidentiality of the adoption records may outweigh privacy rights asserted by the adoptee. Assuming an informational privacy interest exists or


\textsuperscript{60} Prince v. Massachusetts, 321 U.S. 158 (1944).


\textsuperscript{63} See text accompanying notes 43-48 supra.

It is the opinion of this court that while information regarding the heritage, background and physical and psychological heredity of any person is essential to that person's identity and self image, nevertheless it is not so intimately personal as to fall within the zones of privacy implicitly protected in the penumbra of the Bill of Rights.


\textsuperscript{64} In re Roger B., 85 Ill. App. 3d 1064, 1067, 407 N.E. 2d 884, 887 (1980).
withholding the adoption records is a violation of the adoptee's liberty under the fourteenth amendment, the courts have consistently held a recognized right may be subject to judicial balancing and may be overcome by either superior conflicting privacy claims or a sufficiently compelling state interest. Further, legislative intent in establishing the good cause requirement indicates sealed records statutes require such a judicial balancing prior to the release of any identifying information to ensure all interests in the adoption process are protected. In Mellon, Mills, Roger, and Sage the courts recognized that the sealed records statutes protected the conflicting privacy interests of the adoptive parents and biological parents, and in addition, served the state's interest in the integrity of the adoption process. Accordingly, the confidential policy served an important if not


67. The court in Mellon concluded the confidentiality the act required furthered several state policies. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1235 (2d Cir.), cert. denied, 444 U.S. 995 (1979). One policy was to erase the stigma of illegitimacy. Id. Another policy was to encourage the birth parent to use the adoption process when she is unable or unwilling to care for the child. Id. A third policy was that of placing the child in a loving and permanent home. Id. The Mills court added that confidentiality ensures that the relationship with adoptive parents will not be invaded by the natural parent who later wishes to intrude into the parent-child relationship. Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 308, 372 A.2d 646, 649 (1977).

The Roger court stated:

The confidentiality of adoption records serves several purposes. By providing a statutory assurance of anonymity to the adoptee's natural parents, confidentiality encourages the surrender of children for adoption and serves to protect the natural parents from disclosure of a traumatic emotional event and the possible intrusion into their private life by the reappearance of a child given up years before.


The court in Sage stated confidentiality encourages the "development of the adoptive family as a stable social unit. The principle of confidentiality also demonstrates respect for the right of privacy of the natural parents. At the same time, when the interests of the adopted child demand disclosure, the information can be obtained under the good cause standard." In re Sage, 21 Wash. App. 803, 808, 586 P.2d 1201, 1205 (1978). The court added the records are "intended to be confidential at all times and disclosure is the exception." Id. at 809, 586 P.2d at 1205. In contrast to the Mellon and Mills decisions, the Sage court did not deal with the question of whether the state's interest in the adoption process was "compelling" constitutionally. The Sage court required only a rational relationship between the state interest and the means chosen to effectuate that interest and found such a rational relationship existed. Id. at 812, 586 P.2d at 1206.
compelling state interest of maintaining the integrity and success of the adoption process. These courts concluded that a case-by-case approach more effectively protects each participant in the adoption process. The adoptee has access to adoption records upon the appropriate showing of necessity, thus, their right to access is not totally denied, while conflicting privacy interests will be considered along with the adoptee's need for disclosure.

Adoptees also contend the sealed records statute abridges their right to receive important information, a right recognized as protected by the first amendment differing from the right of informational privacy previously discussed. The right to receive information presumably helps individuals participate intelligently in society and encourages informed decision-making. By analogy, access to adoption records arguably will enhance the adoptee's sense of identity, thereby facilitating his ability to participate intelligently in society and to make informed personal decisions. Although courts view the right to receive information as an extended form of free speech, they are not likely to expand the privilege to include rights more appropriately asserted under informational privacy or fourteenth amendment "liberty" analyses. The court in Roger stated: "While the constitution protects the right to receive information and ideas . . . the First Amendment does not guarantee a constitutional right

68. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1234 (2d Cir.), cert. denied, 444 U.S. 995 (1979) (state has an important interest capable of surviving intermediate scrutiny); In re Roger B., 85 Ill. App. 1064, 1068-69, 407 N.E.2d 884, 888 (1980) (only a rational relationship necessary, but court applied intermediate scrutiny techniques to uphold the statute); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 316, 372 A.2d 646, 653-54 (1977) (state has a rational state interest; although the burden shifts to the state, when adoptee reaches age of majority, to demonstrate good cause is not present).


73. See Adoptees Right to Know, supra note 5, at 1204.

of special access to information not available to the public generally . . . . The right to receive information presupposes a willing speaker. 75 The court added, "[n]or can we consider the adoptee's right to receive information absolute to the exclusion of the rights affected by disclosure." 76 Adoptees merely argue the state must not withhold such information from them because of the importance of its contents, but, as the Roger court confirmed, the state need not disclose all information included in its records, even though that information relates to the individual seeking disclosure and may be of a personal nature. 77 Furthermore, if the state did not provide for the confidentiality of the biological and adopting parent's interests, the state is denied the right to retain such records. 78 The state must employ sufficient confidential measures to assure those affected by the records that their privacy interests will not be disregarded. 79 Assuming a first amendment right of access to state-compiled information, adoptees must show that their right of access supersedes the privacy interests of the biological and adoptive parents. Moreover, the adoptees must overcome the fact that sealed records statutes do not completely abridge any such right of access. The Mills court stated:

[N]o constitutional or personal right is unconditional and absolute to the exclusion of the rights of other individuals. The statute herein does not totally deny plaintiff's access to the information they seek. It only requires that they as members of a class in which there is an overwhelming state interest must demonstrate good cause in order to protect the countervailing privacy rights of the natural parents. Such a limitation is based on a valid state policy of protecting the

76. Id.
77. Gotkin v. Miller, 514 F.2d 125, 130 (2d Cir. 1975)(refusal to disclose hospital records to patient does not violate privacy or bodily autonomy).
78. Where the information retained by the state is of a private nature, and the state has an interest in maintaining such records, the state must employ sufficient confidential measures to maintain the privacy interests of those affected by the records. See Whalen v. Roe, 429 U.S. 589 (1977).
79. In the adoption procedures, adoptive and biological parents are given statutory assurance that their privacy interests will be examined prior to disclosure. Thus the statute not only provides procedural protection but confers a statutory right to privacy once the adoption is finalized. See Wash. Rev. Code §§ 26.32.120(2), 26.36.030 (1979); In re Sage, 21 Wash. App. 803, 806, 586 P.2d 1201, 1203 (1978)(interests of natural parents not likely furthered if information regarding their identity and background indiscriminately disseminated).
Rights of others and is not an unconstitutional exercise of state power. 80

Both the Mills and Roger courts correctly rejected the adoptees' asserted constitutional claims on the grounds that; first, the information sought was not available to the general public; second, the state has a right to retain information and is not required to disclose such information upon request despite the fact that it may involve matters personal to the requesting party; third, the state must protect the privacy interests of other parties who may be affected by the disclosure of nonpublic information; and finally, the adoptees' right to the information is not absolute in light of the competing privacy interests or the interests of the state.

Another plausible source of support for adoptees is the Freedom of Information Act. 81 Although adoptees have not asserted this argument in federal court, 82 the adoptee in Sage contended that disclosure was mandated by the state's public disclosure laws. 83 The Washington Court of Appeals, however, denied a statutory duty to disclose adoption records because the public disclosure laws were intended to provide information of interest to the general public, rather than a single individual. 84 Not only the private nature of the information requested, but also the broad statutory exemptions, preclude adoptees' access to adoption information based on either the Freedom of Information Act or the state's public disclosure laws. The Freedom of Information Act exempts confidential information, 85 including

82. Although the court in Mills discussed the Freedom of Information Act, 5 U.S.C. § 552 (1977) in conjunction with the adoptees' right to access, it is not apparent that the adoptees asserted this statutory right in their complaint. Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 313, 372 A.2d 646, 652 (1977).
84. See In re Sage, 21 Wash. App. 803, 811, 586 P.2d 1201, 1206 (1978), citing State v. (1972) Dan J. Evans Campaign Comm., 86 Wash. 2d 503, 508, 546 P.2d 75 (1976). The primary purpose of disclosure laws is to grant the public a right of action for access to information retained by government agencies or the courts which is in the public interest to divulge. Such a statute could arguably grant a right of action to the adoptee but this result is unlikely considering the limits the act imposes via exemptions and the private nature of the information requested. See, e.g., 21 Wash. App. at 811, 586 P.2d at 1206 (1978).
medical files. It also precludes disclosure of information constituting an unwarranted invasion of privacy. The state's Public Disclosure Act similarly exempts information whose release would violate personal privacy or vital governmental interests. Unlike the Freedom of Information Act, however, under the state statutes a superior court's determination that disclosure of exempted material would not infringe unduly upon other's privacy interest or an interest retained by the state overrides the state act's exemptions. Thus, this process is similar to a "good cause" showing under the sealed records statute. Nonetheless, a possible advantage to suing under the public disclosure act is that, once disclosure is granted, adoptees as a class would gain access to such information, avoiding case-by-case determinations. Thus, assuming the court found the information sought to be a matter of public concern, the adoptee would be faced with a judicial balancing approach much like the good cause requirement. Accordingly, a right of action based on the Freedom of Information Act or state public disclosure laws would not alter the impediments imposed in releasing adoption information under the current adoption statute.

Adoptees also assert that sealed records statutes violate the

86. Id. § 552(b)(6).
87. Id. § 552(b)(7)(C).
88. Wash. Rev. Code §§ 42.17.210(3)-.310(2) (1979). Superior courts may override the exemptions if it is not necessary to protect any individual's privacy or a vital governmental function.
89. The Freedom of Information Act does not provide for discretionary or judicial authority to disclose matters exempted by the Act. Matters statutorily exempted from disclosure under other provisions are subject to the limitations the statute imposes as to the right to seek release of exempted material. 5 U.S.C. § 552(b)(3), (c) (1977).
91. Id. Disclosure under either state or federal acts would make the information sought available to the public at large and not merely to select individuals. See, e.g., In re Sage, 21 Wash. App. 803, 811, 586 P.2d 1201, 1206 (1978).
92. This result is merely hypothetical, based on previous application of the disclosure act. It could be that disclosure of exempted material in particular would always require a case-by-case determination due to the other interests involved. But theoretically under the disclosure laws, the court could weigh the interests of adoptees and biological parents as a class and determine whose interests prevail. This result is directly at odds with the adoption statute's requirement that individual interests in each case be examined. It is unlikely the courts would adhere to an approach under the disclosure laws that would circumvent the policies promoted by adoption statutes.

An additional advantage in challenging the adoption statutes under the disclosure laws rather than making a constitutional claim, is that the adoptee's interest need not be deemed "fundamental," merely that personal privacy or vital governmental interests are not threatened by disclosure. Wash. Rev. Code § 42.17.310(2)-(3) (1979). See text accompanying note 57 supra.
equal protection clause. The Constitution prohibits states from denying "any person . . . equal protection of the laws." The equal protection clause does not require the government treat all persons identically. Under most circumstances, it requires only that a state-created classification bear a rational relationship to a legitimate state interest. If, however, the state's classification affects a fundamental right or creates a "suspect" class, the court no longer considers the statute presumptively valid and the burden shifts to the state to show a compelling state interest. The state's interest must also be substantially related to the means chosen to effectuate those goals under strict scru-

93. Adoptees and commentators have also asserted that sealed records statutes violate the ninth and thirteenth amendments. See Note, The Adoptee's Right to Know His Natural Heritage, 19 N.Y.L.F. 137, 154 (1973). See generally Kutner, The Neglected Ninth Amendment: The Other "Rights" Retained By the People, 51 MARQ. L. REV. 121 (1968). The success of a ninth amendment claim is subject to the court's interpretation of the word "others"; "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. CONST. amend. IX. The term could be construed as maintaining only those rights recognized by the state. In the case of the adoptee it is the state which denies access and thus a ninth amendment claim would fail. The Second Circuit recently refused to hold that the sealed records statutes denied thirteenth amendment rights. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1236-38 (2d Cir.), cert. denied, 444 U.S. 995 (1979). The court properly rejected the plaintiff's analogy that the sealing of adoption records sever the parental relation, creating the second "incident of slavery." Id. If a parental relation is severed, it is severed voluntarily, not by the state. Thus the adoption process itself acts to cut off the relationship between child and biological parents and not merely the sealing of the records. In addition, the adoption process creates a parental relationship by confirming the adoptive ties as a familial unit. Unless adoptees are willing to label the entire adoption process as a form of slavery, then their challenge to the sealing of the records itself cannot be considered a form or incident of slavery.


97. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1077, 1102 (1978). When a "right" is fundamental in nature, the level of judicial scrutiny increases. Few statutes survive this strict level of review because the law is invalid unless the state is able to demonstrate a "compelling" interest for the legislation. State statutory classifications may burden the exercise of fundamental rights in two ways:

1) structuring inequities with respect to liberty, property or another interest which penalizes the exercise of a right independently protected against governmental interference;

2) the inequalities may impinge directly on access to, or levels of, a right deemed to be fundamental departing from equality in its availability or enjoyment ("discrimination" or a suspect class is defined in United States v. Carolene Prods. Co., 304 U.S. 144, 152-53, n.4 (1938)(dictum) as public acts which tend to burden discrete and insular minorities).
tiny. Thus, there are two ways strict scrutiny is triggered: the first relating to the nature of the right affected, the second to the type of classification the legislation creates. Because the analysis is under the former it is similar to a substantive due process argument in determining the nature of the right asserted, and adoptees, as previously discussed, will have difficulty successfully characterizing their right as fundamental under substantive due process or equal protection analyses. Adoptees may also fail in asserting the second strand of equal protection analysis because courts are unwilling to classify adoptees as a suspect class. Adoptees argue that limiting access to their original birth certificates, while imposing no restrictions on nonadoptees, creates a suspect classification. The Mellon plaintiffs, for instance, argued that access for nonadopted illegitimates, but not for adoptees, violated the equal protection clause. Because both of these classes are comprised largely of illegitimates, the plaintiffs asserted the law employs a questionable trait to distinguish between who the law burdens and who it protects. The court correctly reasoned that the distinguishing trait between adoptees and nonadopted illegitimates is not illegitimacy, but rather the independent status of adoptee resulting from the legal process, not an accident of birth. Unlike illegitimates, adoptees have not been subject to extensive legal disabilities nor severe social stigma as a result of their birth status that would warrant treating them as a suspect class.

The Supreme Court has also recognized an intermediate level of review triggered by either a "fundamental interest," as opposed to fundamental rights, or a "quasi-suspect" class.

99. See text accompanying notes 43-60 supra.
100. See text accompanying notes 54-57 supra.
103. Id. at 1233.
104. Id. at 1234.
107. See L. Tribe, supra note 97 at 1089-90. Intermediate scrutiny is triggered if important, though not necessarily fundamental, interests are at stake.
108. Id. at 1090. "Second, intermediate review has been triggered if a sensitive,
Adoptees have failed to trigger even this intermediate level of review, requiring a substantial relationship between the means employed to effectuate the end and requiring an important, rather than compelling, state interest. Although there are several judicial approaches to a question invoking intermediate review, courts correctly conclude adoptees do not suffer legal disabilities or discrimination sufficient to classify them as a quasi-suspect class. Courts find that either the adoptee's interest in obtaining adoption records is not fundamental, or, because the statute does not create an absolute bar to access, the state's interest in limiting disclosure is sufficiently important to justify requiring the adoptee show good cause for release of adoption information.

Although the state need prove only a rational relationship between the legislative means and ends to uphold the sealed records statute's validity, absent either a suspect or quasi-suspect class or fundamental right or interest, both the Mellon and although not necessarily suspect, criteria of classification are employed." The quasi-suspect designation applies to gender stereotypes, alienage, and illegitimacy classifications.


111. See L. Tribe, supra note 97, at 1082-89. Five types of judicial approaches to a question invoking intermediate review deserve mention: 1) assessing the "importance" of the liberty restrained or the objectives of the challenged classification (the state's interest must be "important" although not necessarily "compelling"); 2) demanding "close fit" by requiring that the rules employed by the government be substantially related to the achievement of the objectives invoked to defend those rules. Craig v. Boren, 429 U.S. 190 (1976); 3) requiring current articulation by refusing to supply a challenged rule with rationales not actually advanced by the litigating parties; 4) similarly, requiring that legislative history document the actual purpose of the rule and that this purpose in fact be a motivation of the enactment; 5) supporting a challenged legislative scheme as constitutional because it provides for exceptions to the general rule rather than creating an irrebuttable presumption and thus rights are merely impeded and not denied (when adoption statutes are challenged, the state poses this argument to show the adoptee need only show good cause to gain access, and therefore the sealed records policy does not act as a complete bar to information).


Mills courts discussed the possible result when applying a higher level of scrutiny. The Mellon court held that the state not only has an important interest in ensuring other participants in the adoption process are protected and in maintaining the integrity of the adoption process that validates the statute under intermediate scrutiny\textsuperscript{116} but Mills added this is also a compelling state interest capable of surviving strict scrutiny.\textsuperscript{117} These state interests are best served by the confidentiality the statute requires, a requirement promoting the social policy underlying adoption laws and protecting the privacy of the adopting and natural parents as well as the state’s separate interest in the adoption process.\textsuperscript{118}

Although none of the courts, in upholding the sealed records policy, discussed the statutory means employed to effectuate the state’s interest, all stated the good cause requirement best protects the varied interests in the adoption process.\textsuperscript{119} The good cause requirement merely imposes an obstacle to the adoptee, not an absolute bar to access.\textsuperscript{120} Access specifically relates to one form of intermediate scrutiny;\textsuperscript{121} that is, if the state impedes rights without denying them, then the court is likely to uphold the validity of the restrictions when supported by valid state interests. Judicial support of the sealed records policy indicates that the means chosen by the state are constitutionally sound. Nonetheless, proper constitutional analysis requires additional

\textsuperscript{116} In Mellon the court stated, “Even assuming that the classification here were subject to intermediate scrutiny, it would not violate equal protection; for we conclude that it is substantially related to an important state interest.” ALMA Soc’y v. Mellon, 601 F.2d 1225, 1234 (2d Cir.), cert. denied, 444 U.S. 995 (1979).

\textsuperscript{117} The court in Mills used a rational relationship test to deny the adoptee’s request for access to adoption records. The court added, however, that the state had a compelling interest in regulating access to adoption records indicating that if strict scrutiny were applicable, adoptees would still be unsuccessful in challenging the statute. Mills v. Atlantic City Dep’t of Vital Statistics, 148 N.J. Super. 302, 315-16, 372 A.2d 646, 653 (1977).


\textsuperscript{120} In re Roger B., 85 Ill. App. 3d 1064, 1067-68, 407 N.E.2d 884, 887 (1980).

\textsuperscript{121} “The fifth and final technique of intermediate review is to require that the legal scheme under challenge be altered so as to permit rebuttal in individual cases even if the scheme is not struck down altogether.” L. Tribe, supra note 91, at 1088.
consideration of the means employed by the state. The good cause requirement of the statute is both rationally and substantially related to the purpose of assuring privacy to participants in the adoption process because the good cause requirement ensures judicial consideration of all privacy interests prior to release. It is not clear what effect confidentiality has upon the effectiveness of the adoption process. Some states who open records to adult adoptees argue adoptions have not been affected statistically. It is arguable that the presence or absence of confidentiality in the adoption process would affect either one's willingness to participate in the adoption process or the growth of illegal methods of adoption. This is sufficient to satisfy a rational relationship test applicable to the adoptees' constitutional challenge. Despite the paucity of evidence indicating a substantial relationship between this particular statutory purpose and the means used to effectuate that purpose, adoptees are not likely to overturn the statute on a means-ends argument. First, all the courts require to uphold the statute is a rational relationship, and second, the state has another asserted purpose which substantially relates to the means employed, that is, protecting the varied privacy interests. The state need only show one purpose meets the means-ends analysis to validate the statute. Adoptees could successfully assert that the means employed by the statute are not the least restrictive means. However, in order to expose the statute to such a rigorous judicial review they must demonstrate that a higher level of scrutiny applies.

In discussing the rights of adopting parents, commentators have classified their interests as nonlegal, nonconstitutional, and

123. "This theory of rationality as governing the relationship between means and ends assumes that all legislation must have a legitimate public purpose or set of purposes based on some conception of the general good." L. Tribe, supra note 97, at 995.
124. Id. at 996
126. The sealed records policy effectively seals non-identifying information such as heredity traits and nationality, as well as identifying information. If the statutes were subject to an intermediate level of review, they should be tailored specifically to the goal of preventing the indiscriminate release of identifying information only. See L. Tribe, supra note 97, at 1083. A prerequisite of the least restrictive means test, however, is that the court finds the adoptees have a fundamental interest or constitute a quasi-suspect class. See text accompanying notes 107-21 supra.
nonexistent, at least when the adoptee reaches adulthood. 127

127. Commentators summarize the state's interest as (1) providing the adoptive family with protection from outside interference, (2) protecting adoptive parents who fear the adoptee will abandon them for the biological parents through a continuous application of the sealed records policy, and (3) recognizing the need for anonymity of the biological parents. The author of one law review article believes that the purposes of the statutes are valid to enable the family to function as a unit, but once the child reaches the age of majority and is no longer subject to parental control, the family function is fulfilled. When the adoptee reaches adulthood, the state's interest in actively supporting the adoptive family's autonomy ceases, because the adoptee is capable of making independent decisions. See Adoptee's Right to Know, supra note 4, at 1211-12; Klibanoff, Genealogical Information in Adoption: The Adoptee's Quest and the Law, 11 FAM. L.Q. 185, 195-96 (1977); (Klibanoff argues adoptive parents cannot put their own fears above the child's need for identity); Comment, Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma, 4 SAN FERN. V.L. REV. 65, 79 (1975) (the author states the adoptive parent controversy is a psychological, not a legal issue).

What these legal scholars fail to recognize is the existence of the family unit once the child reaches the age of majority. The psychological and developmental needs of the child and parent do not cease to exist once the child turns age 18 or 21 and other statutory or constitutional rights granted to the family should not terminate on such an arbitrary assumption. The child's increased ability to make decisions does not alter the fact that parents generally maintain a strong emotional tie to their child throughout his adulthood. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1235 (2d Cir.), cert. denied, 444 U.S. 995 (1979); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 315-16, 372 A.2d 646, 653 (1977); In re Sage, 21 Wash. App. 803, 806, 586 P.2d 1201, 1203 (1978).

The plaintiff in Sage argued the classification of adult adoptees with minor adoptees was irrational, and therefore violated equal protection. Mr. Sage argued that the policies underlying sealing of adoption records related only to minor adoptees. The court reasoned that the policies of the adoption statute required minor and adult adoptees be treated similarly when considering the right of other parties affected by disclosure as well as the state's interest in the adoption process. The court analogized the adoption process as a "four-way contract between the state, the natural parents, the adoptive parents and the adopted child" and concluded all these interests were served by the continued policy of confidentiality. 21 Wash. App. at 812, 586 P.2d at 1206. Thus, using the court's analogy, the adoptee was asking the state to breach the contract previously made, against its own interests as well as the interests of several of the "contract participants."

The Mellon court admitted some of the considerations, applicable at the time of the adoption and throughout childhood, apply with less force when the child reaches adulthood. The court did not specify what considerations apply with less force, but could be referring to the need to protect the child from any stigma that may result if information regarding potential unpleasant circumstances of adoption were prematurely released. Nevertheless, the court stressed that the state's interest in protecting the natural parents, in addition to adoptive parents, does not wane when the child reaches the age of majority. ALMA Soc'y v. Mellon, 601 F.2d at 1235-36.

The Mills court went much further in distinguishing between child and adult adoptees. The court concluded the state's interest in protecting the needs of the adoptee and the natural parent continues after the child reaches the age of majority, but proposed a judicial compromise to the competing interests by changing the procedural criteria for release of the records. When adult adoptees seek access to their records the burden is shifted to the state to show good cause does not exist. Once the burden has shifted, if the state is unable to show good cause does not exist, the adult adoptee automatically will gain access without further balancing of interests by the court. Mills v.
Classification of adoptive parents' rights as nonlegal is pure sophistry because the adoption laws explicitly protect the privacy rights of the adopting parent. Furthermore, the adoptive parent may assert a constitutional right to privacy, as was recognized in *Mellon* and *Mills* to ensure the integrity of the family unit. This right of privacy relates to freedom from outside interference granted to parents and the family unit. If judicial protection of the family terminates when the child reaches the age of majority in the adoptive but not the biological family, adoptive parents may argue the legal relation of adoption is distastefully temporary. Although not all adopting parents would oppose a statutory change allowing adoptees to locate their biological parents, some fear the child's need to engage in a search reflects their failure as parents. Other adopting parents

Atlantic City Dep't of Vital Statistics, 148 N.J. Super. at 318-22, 382 A.2d at 654-56.

Granted, the approach is a novel one, but such judicial legislation would be contrary to the Washington statute which requires the adoptee to show good cause to gain access, making no distinction between adult and minor adoptees. In the *Sage* case the plaintiff-adoptee argued the statute should distinguish between adult and minor adoptees. His argument was rejected because the conflicting interests of the state, adoptive parents, and biological parents remained vital beyond the adoptee's reaching the age of majority. 21 Wash. App. at 812, 586 P.2d at 1206-07. The Washington court was correct in establishing the continuing nature of the adoptive and biological parents' interests.

128. *In re Reinuius*, 55 Wash. 2d 117, 128, 346 P.2d 672, 674 (1959). Although one purpose of the adoption statute is to protect adopted children, it is also designed to protect adopting parents from unhappiness, embarrassment, and heartache by providing adequate information about the child and by protecting the child and adoptive parents from subsequent disturbance of the family relationship by the natural parents. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1231 (2d Cir.), cert. denied, 444 U.S. 995 (1979) (recognizing the adopting parents' continuing interest in the family relationship once the child reaches the age of majority); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 307-08, 372 A.2d 646, 649 (1977) (recognized the adopting parent's rights to raise the child without interference from the biological parents). The *Sage* case recognized the state's interest in maintaining confidentiality and in protecting both biological and adoptive parents continued beyond the age of majority. 21 Wash. App. 803, 812, 586 P.2d 1201, 1206 (1978). As volunteers to the adoption process, the adopting parents play a vital role and many may enter into such an arrangement based on the rights afforded them. Commentators, legislators and courts must consider the possible chilling effect a reduction in adoptive parents' rights may have on the adoption process in the future.


132. Some adoptive parents' fears may be justified. One study indicates that some
feel threatened by the child's possible future relationship with
the biological parents.\textsuperscript{138} Those fears could detrimentally affect
one's willingness to participate in the adoption process because
most parents wish to believe the child is their own in every
sense.\textsuperscript{134}

Adoptive parents may also find protection in the ninth
amendment as well as state and federal privacy acts. The ninth
amendment may provide constitutional protection of the ado-
pptive parent's interests by reserving a right to maintain the in-
tegrity of the family unit within the penumbra concept of the ninth
amendment.\textsuperscript{135} Penumbra rights are those not enumerated in the
constitution or those not granted by the state but considered
intrinsic in nature.\textsuperscript{136} In addition, state\textsuperscript{137} and federal\textsuperscript{138} privacy
acts reinforce the privacy interests of adoptive parents by assur-
ing that the retention of the state records will not infringe on
privacy interests affected by disclosure. Also, disclosure is
restricted upon a consideration of conflicting privacy rights.\textsuperscript{139}
Thus, because adopting parents retain constitutionally and stat-
tutorily protected rights, their interests and willingness to par-
ticipate in the adoption process must be considered before any
changes are made to the sealed records policy. Because allowing

parents adopt because they are unable to have children themselves and are likely to be
insecure about their parental role. A. McWhinnie, Adopted Children, How They Grow
Up (1967). But even classifying the adoptive parents' concerns as "merely psychological"
do not mean courts or legislatures should divest them of all protection. The argument
that the adoptive parents' needs are merely "psychological" is a dangerous argument for
legal scholars to assert when they are trying to claim the adoptee's psychological "need
to know" amounts to a constitutional right; thus, the categorization "cuts both ways,"
the result being that both the psychological interests of the adoptive parents and child
are protectable or neither is protectable, depending on the constitutional rights asserted.

133. \textit{Id.} at 250-54. In addition, adoptive parents may fear the possible confusion as
to disciplinary matters that an active relationship with biological parents might create.
134. \textit{Id.} at 251-53.
136. Justice Douglas advanced a penumbra theory of privacy in the \textit{Griswold} case,
stating specific provisions of the Constitution have penumbras and emanations that
include protections for various subsidiary interests. Griswold v. Connecticut, 381 U.S.
479, 481-86 (1965).
139. The Privacy Act, 5 U.S.C. \S 552a, which sets guidelines for the Freedom of
Information Act, 5 U.S.C. \S 552 (1976), ensures that the government's collection and
maintenance of information adequately provides for the individual's right to privacy.
Such legislation indicates the government's continued concern for a general right to
privacy.
disclosure to adult adoptees may impact the adoptive parent’s willingness to participate in the adoption process, any relegation of adoptive parents’ interests as secondary to that of the child’s may have a devastating effect on the adoption process.

The adoption statutes protect the privacy interests of the biological parent which may also fall within the right to personal autonomy protected by the Constitution.140 The public typically views the biological mother as young, unmarried, and lacking the means to support her child; therefore, the adoption process may afford the baby better opportunities in life.141 The statute reflects this perception and also assumes that adoption will benefit the mother by giving her a fresh start perhaps without later reference to the incident.142 The stereotype has validity because over 60% of adoptees are born out of wedlock, and most of the remaining 40% represent relative or stepparent adoptions.143 Actual reasons for relinquishing the child vary from concern for the child’s best interests to wishing to erase reminders of the unpleasant circumstances of conception, as in the case of rape or incest.144 Thus, biological parents’ reasons for maintaining anonymity will vary. Admittedly, many biological parents would

142. This reasoning was articulated in Mills:
    [T]he natural parent surrenders a child for adoption with not merely an expectation of confidentiality but with actual statutory assurance that his or her identity as the child's parent will be shielded from public disclosure. In reliance on these assurances the natural parent of an adult adoptee has now established new life relationships and perhaps a new family unit. It is highly likely that he or she has chosen not to reveal to his or her spouse, children or other relations, friends or associates the facts of an emotionally upsetting and potentially socially unacceptable occurrence 18 or more years ago. Id. at 310-11, 372 A.2d at 651.
143. In 1976, one of every ten adolescent females became a mother before she had graduated from high school. The unmarried pregnant teenager often represents a picture of severe emotional disturbance. A. SOROSKY, A. BARAN & R. PANNOR, THE ADOPTION TRIANGLE 47-52 (1978).
144. A study conducted by Sorosky, Baran and Pannor took a small sampling of birth parents, attempting to determine the reasons for relinquishing the child. The study came up with the following results: unmarried and wanting the child to have a family, 68%; unprepared for parenthood, 26%; influenced by parents, 21%; unable to manage financially, 18%; pressured by social worker, doctor, or minister, 15%; not emotionally ready, 21%; wanting to finish school and unable to do so with a child to raise, 26%; father of baby not interested in marriage, 13%; never considered keeping, 8%; did not believe in abortion, 8%; marriage to the other parent breaking up, 5%; married man was father of the child, rape, or parents disapproval of the birth father, 3%. Id. 51-2.
forego their right to privacy if they knew the child suffered from a severe identity problem or overwhelming desire to know his biological origins.\(^{145}\) Biological parents, though, rarely actively seek information about the relinquished child.\(^{146}\) This does not necessarily mean that they are not curious or concerned,\(^{147}\) only that they may have weighed that curiosity against the ultimate disruption such a reunion would cause for themselves, the child, and the adoptive parents.

Commentators argue the biological parent retains a contractual right to sue private adoption agencies for invasion of privacy if they release identifying information in breach of an express or implied contractual right.\(^{148}\) Similarly, they can sue in tort against the state or adoptee for any such disclosure.\(^{149}\) Finally, they argue that either potential cause of action is an adequate safeguard rendering unnecessary the adoption statutes' nondisclosure provisions. This argument, however, fatally ignores the statute's purpose of preventing psychological harm before it takes place.\(^{150}\)


\(^{146}\) Of the adoption agencies participating in the study, an average of 10 biological parents returned each year seeking information about the child from an estimated 1472 biological parents served by the agencies. More than one fifth of the agencies had no returning biological parents in a year, and only five agencies had as many as 50 requests in one year. Child Welfare League of America, The Sealed Adoption Record Controversy: Report of a Survey of Agency Policy, Practice and Opinion 20 (1976).

\(^{147}\) Some biological parents support ALMA's goal of abolishing the sealed policy. Sorosky surveyed biological parents asking whether they felt adoptees should be given information revealing their identity. Of the small sample responding, 76% felt that the adoptee should be given such information, and of those, some indicated they would be receptive to a reunion while 6% indicated they desired updated reports on the child's progress. Comment, A Reasonable Approach to the Adoptee's Sealed Records Dilemma, 2 Ohio N.U.L. Rev. 542, 547-48 (1975).


\(^{150}\) Some commentators urge that an adoption agency or the court should act as an intermediary contacting the biological parent and requesting consent before the adoptee receives identifying information. See Comment, Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma, 4 San Fern. V.L. Rev. 65, 80 (1975). This approach disregards the disruption such contact will cause and the difficulty of the decision the biological parent is forced to make. Once biological parents are aware of the adoptee's search, they can no longer make the assumption that the adoptee will be content without knowing the details of their relinquishment. Initiating such a search indicates to the birth parent that the child demands additional information, perhaps information only the biological parent can disclose.
A change in the current adoption practice without safeguarding biological parents' interests would ignore their role as a vital participant in the adoption process. Regardless of the indications that some birth parents would be willing to forgo their privacy rights, those who wish to maintain their anonymity, for whatever reason, cannot be ignored. Even with prospective application of a change in the sealed records policy, the existence of a right to privacy may affect the initial decision to relinquish the child. Denial of that right may have a chilling effect on the biological parent's willingness to participate in the adoption process in the future.151

The state's interest in maintaining an effective adoption process encompasses the interests of the child, the adopting parents, and the biological parents. The Washington Supreme Court summarized the purpose of the adoption statute152 as protecting the child from an adoption by those unfit,153 protecting the natural parents from an abrupt decision to relinquish custody,154 protecting the adopting parents from unhappiness or heartache,155 and protecting both the child and the adopting parents from subsequent disturbance of the family relationship by the biological parents.156 The Washington State Legislature has attempted to approximate the constitutional balancing of rights within the statute by directing the court to focus on each individual participant's rights.157 Although statutory and constitutional balancing approaches are similar in application, they differ in the sense that a prerequisite showing of conflicting constitutional rights must exist before constitutional balancing is applicable,158 whereas statutory balancing takes place as provided by statute.

151. Secrecy at least offers many of the birth parents the promise of "starting over" without later being subjected to any embarrassment or unpleasantness a future reunion might cause. See Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 310-12, 372 A.2d 646, 651 (1977).
154. Id.
155. Id. The opinion indicates the statute is aimed at protecting the adoptive parent from potential unhappiness resulting from an uninformed parental decision regarding the child due to insufficient medical history. The statute specifically provides that the adoption agency shall issue a medical report to the adopting parents. WASH. Rev. Code § 26.36.050 (1979).
158. See text accompanying notes 61-70 supra.
The state also maintains an independent concern for the integrity and effectiveness of the adoption process. The state’s concern with problems created by an expanded black market for adoptions\textsuperscript{159} is an additional factor in the balancing process. Because of increasing demand for adoptable children, there has been a greater influx of black market racketeers in the adoption process.\textsuperscript{160} To maintain the integrity of the legal adoption process and prevent any further growth in the black and gray\textsuperscript{161} adoption markets, the state must weigh any legislative change in the sealed records policy against the possible effects of black market growth. If anonymity is not offered in legal adoptions, but can be guaranteed only through the black market or illegal process, the discrepancy may leave many biological parents without a meaningful choice. The rights the state seeks to protect on behalf of the child, the adoptive parents, and the biological parent, as well as the state’s independent interest in the adoption process, becomes one side of the constitutional or statutory balance and must be weighed against the adoptee’s right to access in a challenge to the state’s statutes.

This balancing technique was judicially applied in Sage, but the issue arises more frequently at the superior court level.\textsuperscript{162} Although the Washington Court of Appeals set a directive for judicial interpretation of “good cause,” it has not established uniformity among the superior courts.\textsuperscript{163} The Sage court held

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\item \textsuperscript{159} Morris, Some Problems Relating to Adoptions in West Virginia and Recommended Changes, 63 W. VA. L. REV. 12, 14 (1960). In 1960, Morris indicated that black market adoptions had begun to affect the legal adoption process.
\item \textsuperscript{160} Grove, Independent Adoption: The Case for the Gray Market, 13 VILL. L. REV. 116, 118 (1967).
\item \textsuperscript{161} The term “gray market” is used to mean legal adoptions using partially illegal means. For a discussion of the “gray market,” see Grove, supra note 160, at 121-25.
\item \textsuperscript{162} The question most often arises in Washington superior courts. But these decisions are unpublished. Survey results indicate an average of less than 10 applications for adoption records occur per year in counties other than King County. See notes 183-84 infra.
\item \textsuperscript{163} As the Sage court indicated, the lower courts are given wide discretion to interpret the good cause requirement. In re Sage, 21 Wash. App. 803, 810, 586 P.2d 1201, 1206 (1978). Such discretion results in drastically different treatment of adoptees’ requests from county to county. See notes 183-84 infra.
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that consideration of the various conflicting interests is required to determine if good cause is present,\textsuperscript{164} noting that good cause has no fixed meaning, thereby leaving the judiciary broad discretion.\textsuperscript{165} Entrusted with adoption documents, the request for information generally begins and ends at the superior court level. Thus differing approaches may define adoptee rights. Because in Washington each superior court judge views the meaning of good cause differently inconsistent results abound.\textsuperscript{166} An example of such inconsistencies is one superior court's defining the good cause requirement as a "reasonable medical need" and perhaps a "property interest," further stating a "psychological need to know is not sufficient under ordinary circumstances."\textsuperscript{167}

A proposed amendment\textsuperscript{168} to Washington's adoption statute would make identifying information available to the adult adoptee upon petition if the biological parents file a consent form at the time of adoption. If no consent form has been filed, the court shall appoint a "confidential intermediary if: (1) The adult adopted person no longer lives with or no longer is a dependent of the adoptive parents;\textsuperscript{169} or (2) The adoptive parents of the adult adopted person file written consent to the

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165. \textit{Id}.
166. The inconsistency mentioned in the text is demonstrated by comparing King County's approach, where a mere request is cause enough, with the approach taken in Yakima County where a reasonable medical need or property interest is required to show good cause. \textit{See} text accompanying notes 167-68 infra.
167. This particular comment by a Superior Court Judge in Yakima, Washington, was in response to a survey conducted by the author. The survey, "Survey on the Judicial Approach to Washington State Adoption Laws and the Adoptee's Right to Access" was conducted to assist the author in examining various approaches to the "good cause" requirement.
169. \textit{Id} § 5.
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search with the court." The confidential intermediary is to conduct a six month search based on the information contained in adoption proceeding records, the costs to be borne by the petitioner, with the court setting the fee for such services. Once the intermediary contacts the biological parent, a consent to release their identity to the adoptee is sought. The intermediary can even be responsible for arranging contact. The proposed bill would eliminate the good cause requirement in all cases but those where the adoptee is either a dependent or a minor and unable to secure the consent of his adoptive parent to conduct such a search.

There are two basic problems with the proposal. First, it does not protect adoptive parents. There are no provisions requiring the consent of the adoptive parents either at the time of adoption or upon the adoptee reaching the age of majority. The bill does not require the court to disclose to the adoptive parents the presence or absence of the biological parents' consent form at the time of adoption. Such information would put adoptive parents on notice as to possible future psychological harm. Because the court need not examine the adoptive parents' interests, the new legislative proposal fails to protect those interests. Such a defect could subject the legislation to constitutional attack. The legislature must consider adoptive parents' rights in parity with the adoptee in light of their constitutionally protected rights and interests.

The second problem with the proposed statute relates to the biological parent's right to privacy. The contact of the "intermediary" alone can be a disruptive experience, invading the biolog-

170. The intermediary must submit a written report of the search to the court within six months of appointment. If the intermediary fails to locate the natural parents within six months, the report must recommend whether further search is warranted. Id. § 6(1)(c). The court may order the search to be continued for a specified time. Id. § 8(c).

171. Id. § 6(4).

172. Id. § 6(1)(c).

173. Id. § 6(3).

174. The bill states that an adoption decree shall provide: "That the records of the registrar shall be secret unless otherwise provided by the court, and the same shall be disclosed only upon order of the court for good cause shown or in accordance with sections 3 through 8 of this 1981 act." Id. § 9(4).

175. The adoptive parents' consent to appointment of an intermediary is required if the adult adoptee is still a dependent of the adoptive parents. Id. § 5.

176. See text accompanying notes 127-39 supra.

177. See text accompanying notes 140-51 supra.
ical parent’s privacy. In addition, the natural parent, at the time of adoption, had an opportunity to evaluate the positive and negative aspects of releasing their identity at the child’s maturity, plus successive opportunities to consent to such release during the child’s minority. Whether their refusal to consent was premised on their own wish for anonymity or the best interests of the child, that initial decision should be respected. This is not to imply the absence of a consent form should pose an absolute bar to the adoptee, but the adoptee should be required to substantiate the reasons for requesting disclosure. The current limitations on release ensure that identifying information is not released at the expense of the natural parent’s rights to privacy, a right the legislative proposal arguably ignores.

Washington’s current adoption laws require courts to consider each request in light of the state’s interest in the adoption process and the various interests the state protects. Although the legislature has not defined good cause, its most recent amendment to the adoption statute reaffirms a commitment to the sealed records approach and the confidentiality it provides. Thus, despite growing discontent surrounding secrecy of adoption information, the legislature as a whole still believes the identity of biological parents should remain confidential absent a specific showing of good cause. Additionally, Washington statutes, unlike most states, forbid adoption agencies from releasing information without a court order, indicating further support for the confidentiality of such records despite private placement.

Currently, a disparity exists in Washington courts regarding the availability of adoption records as demonstrated by King County granting adoptees’ requests without an examination of good cause, while other counties attempt to follow the legis-

180. WASH. REV. CODE § 26.36.050 (1979). This provision concerns the release to the adoptive parent of medical information relating to the mental, physical, and sensory handicaps of the adopted child. The amendment added “said report shall not reveal the identity of the natural parents of the child.” Id.
181. Id. § 26.36.030 (1979). Other states usually allow agencies to determine their own disclosure policies.
182. See text accompanying notes 162-68 supra.
183. Of the 17% of all Washington superior courts responding to the author’s survey (admittedly a low rate of return, the survey results have been excluded from the text but they are used here for the purpose of comparing various approaches to the good cause requirement), all indicated the statute intended to protect interests beyond those of the
Adoption Records

lative intent and the judicial directive set out in the Sage case, both calling for a balancing of the interests affected by disclosure. This disparity, along with growing public interest in the controversy and current legislative re-evaluation call for close evaluation of the sealed records policy. Rather than abolishing the sealed records policy, the legislature should grant a clear directive of the elements comprising good cause. Such a directive would clarify the type of need the requesting adoptee should demonstrate plus instruct the courts as to the weight to be given adoptee and biological parents' interests. The legislature must clarify whether mere curiosity constitutes sufficient cause for release. Although the policy behind the sealing of adoption records negates the plausibility of this argument, the courts still disagree as to whether this constitutes good cause. The statutory wording requiring "good cause" coupled with the need to protect privacy rights, calls for a greater showing of need than a "mere curiosity." Such need should amount to a medical necessity or perhaps a reasonable medical need, and could include severe psychological problems if adequately demonstrated. The rationale of attempting to discover property

adopted child. Most stated the sealed records policy protects the adopting parent and the biological parents, and furthers legitimate state interests in the adoption process, beyond protecting the adoptee. The majority of the judges responding also indicated the most recent amendment to the adoption statutes was a reaffirmation of the legislature's intent to maintain a "sealed records" policy. When asked what an adoptee might assert to establish good cause, the judges indicated much depends on the factual circumstances and that the determination should remain discretionary. When asked whether a "psychological need to know" would be sufficient good cause, most indicated ordinarily this alone would be insufficient. Some stated more legislative direction is needed to define good cause. Diversity among Washington counties makes the application of the sealed records policy unequal and problematic within the state.

184. There are indications the adoptees' organizations in Washington State may make another constitutional challenge to the adoption statutes. See CHILD WELFARE LEAGUE OF AMERICA, THE SEALED ADOPTION RECORD CONTROVERSY: REPORT OF A SURVEY OF AGENCY POLICY, PRACTICE AND OPINIONS 15 (1976). The Washington Adoptees Rights Movement, a Washington organization generating growing support, would not comment on their intentions regarding possible future action seeking to strike down the statute.

185. See text accompanying notes 169-79 supra.

186. Id.

187. The determination as to the existence of psychological problems remains subjective. Some courts have found that the adoptees' pursuit of legal action itself indicates a degree of necessity beyond a mere curiosity. See In re Adoption of Female Infant, 105 DAILY WASH. L. REP. 245 (D.C. Super. Ct. Jan. 12, 1977). Such rules or broad statements pre-empt the purpose of individualized determinations. If any pursuit of legal action amounts to a psychological problem requiring disclosure, the adoptee is provided with blanket good cause in any request for release.
interests or inheritance rights\textsuperscript{188} is insufficient because it provides blanket “good cause” for any adoptee seeking release and goes against the policy of adoption.\textsuperscript{189} Although determination of what constitutes medical necessity or reasonable medical need remains subjective, it establishes parameters for defining the type of necessity adoptees must demonstrate. The interests of the biological parents, as evaluated from the circumstances of the adoption, plus the interests of the adoptive parents, if discernible at the time of the request, would determine the particular rigor of the good cause requirement in each case. Although court approval of the sealed records policy in the Mellon, Mills, Rogers, and Sage decisions embodies the best method of protecting all members of the adoption “triangle” and the state’s interest in the adoption process, the statute could be modified to accommodate some adoptees’ needs. A suggested modification in the current law would require adoption agencies to compile reports including information on adoptees most often requested by adoptees\textsuperscript{190} other than identifying information. This may be

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189. The policy of adoption is to create a familial unit, treating all family members as if the previous biological ties do not exist. This is evidenced in the confidentiality provisions of the adoption statutes as well as the inheritance statutes severing rights to inherit between the adoptee and biological relatives. See WASH. REV. CODE §§ 26.32.140, .150 (1979).

A study of 58 adult adoptees indicated the majority wished to obtain information on the age, occupation, and personality of their biological parents, why they had been placed for adoption and how the adoption was arranged. Some feared the risks of inherited disease. Some wanted only background information, while others desired to meet personally with their biological parents. Several of those studied had actually learned something of their biological parents and found out information they would rather not have discovered. A. McWhinnie, ADOPTED CHILDREN, HOW THEY GROW UP 240-45 (1967). In another study, adult adoptees stated their main goal was to find their natural parents (60\%) and of those, three out of five were looking for their biological “mothers.” Thirty-seven percent primarily wished to obtain information about their sociological and biological origins and the remaining few were searching for their original birth certificates for practical reasons. J. Triseliotis, IN SEARCH OF ORIGINS: THE EXPERIENCE OF ADOPTED PEOPLE 15 (1973). For many adoptees, a compiled outline by the court or adoption agency devoid of any identifying clues would not be effective as a compromise. See DISCOVERY RIGHTS OF THE ADOPTEE—PRIVACY RIGHTS OF THE NATURAL PARENT: A CONSTITUTIONAL DILEMMA, supra note 150, at 68 (1975) (statement by Florence Fisher, Founder of ALMA, “I want a face-to-face confrontation, not answers from a social worker.”). It is this desire for a personal meeting with the birth parents, regardless of their wishes, against which the statute must provide protection.

190. WASH. REV. CODE § 26.36.050 (1979) (this statute deals solely with the medical
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an effective compromise between the competing interests because identifying information comprises only part of the information adoptees find helpful in establishing their identity. Limiting availability of identifying information ensures biological parents adoption records are released only after careful analysis of all the interests in a particular case. Using court-appointed intermediaries to contact biological parents in an effort to gain their consent to disclosure merely delays the potential trauma a reunion may cause. It also pressures the biological parent into a difficult decision without ensuring the adoptee's need to know amounts to the statutory "good cause" requirements. Once contacted, the anonymity provided by the statute is destroyed. Total abandonment of the sealed records policy ignores the interest of biological parents wishing to retain anonymity, as well as the concerns of the adopting parent, thereby providing no protection to individuals based on particular circumstances. Alternatively, disclosure of medical information could give adoptees a better sense of heredity and essential medical history. The statute does not currently require such information be compiled. This approach would adequately protect all rights involved in the adoption process and would not endanger the permanence of the adoptive family unit. Adoptees still dissatisfied or those with special needs could petition the courts for further consideration of the interests at stake.

Despite various constitutional challenges to the sealed adoption record laws, adoptees' rights are not absolute and circumvention of the judicial balancing process currently required by the sealed records statute would threaten recognized rights

history of the biological parents and does not describe hereditary traits). This method would not depend on the adopting parent transmitting the information because this often proves embarrassing or awkward to both the parent and the child. Frequently, adoptive parents are reluctant to discuss the child's biological background or the circumstances surrounding the adoption and cannot be relied on to discuss the information the adoptee seeks. See B. JAFFEE & D. FANSHIEL, How They Fared in Adoption: A Follow-Up Study 133-46 (1970). Any age limit requirement on such a proposal would be a matter of legislative discretion.

191. WASH. REV. CODE § 26.36.050 (1979). Upon adoption, the information compiled in compliance with this section is given to the adoptive parents, not to the adoptee. The purpose of the report is to aid adoptive parents in making medical decisions. The statute requires that mental, physical, and sensory handicap be revealed to the adoptive parents and include information available on the mental or physical health history of the natural parents to aid the adoptive parents in the adoptee's proper health care. Nothing in this provision indicates hereditary traits or medical information is available to the adoptee.

192. Id.
residing in non-adoptee participants in this controversy. The balancing approach requires the court to examine each individual's situation in the adoption process to protect competing rights in any given case. Although the good cause requirement needs further judicial or legislative articulation to provide uniformity, and despite the statute's overly broad effect in withholding information which would not reveal the identity of the biological parent, a showing of good cause is necessary to ensure the greatest protection to all participants in the adoption process.

Eileen M. Lawrence

193. ALMA Soc'y v. Mellon, 601 F.2d 1225, 1236 (2d Cir.), cert. denied, 444 U.S. 995 (1979) (the court discussed the potentially overbroad statutory effect in terms of affording confidentiality to some biological parents who may not wish to be protected). The term overbroad is used here to refer to the quality and quantity of the records sealed as confidential. If disclosure would not tend to identify the biological parents, but would be insightful to the adoptee, information such as religious affiliation, national heritage, or hereditary traits, should be disclosed to the adoptee upon request.