The German Self-Determination Act
Ignoring Cryptography and Endangering Trans* People

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Recap: The German Self-Determination Act (SBGG)

- Official title: *Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag (SBGG)*
- **Enables trans*/inter/nonbinary people to change first name(s) / gender entry by self-declaration**
- Supersedes the *Transsexuellengesetz (TSG)* (Transsexual Act)
  - TSG required a lengthy, expensive, and degrading process to change name and gender entries
  - Parts declared unconstitutional by the Federal Constitutional Court (BVerfG) in 6 decisions
- § 2: Declaration of entry changes at civil registation office
- § 6 & § 9: Severe issues enabling future discrimination, *not our focus here*
- **§ 13: Prohibition of disclosure**

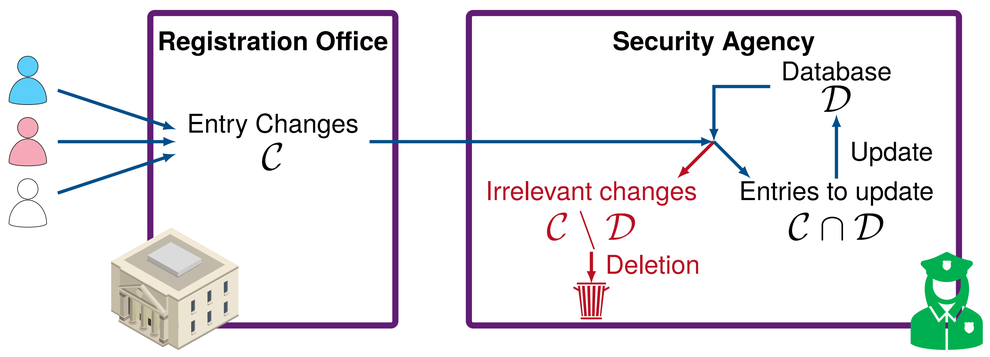
How did a law,
intended to protect trans* people,
almost enable the police to
collect lists of them?

Prior Draft (Nov. 2023) [BT23]

Exception (para. 5) to § 13: Registration office must send
- last name, birth date, …
- **deadname & new name**
- **prior & new gender entry**

to
- Federal Criminal Police Office (BKA)
- Federal Police (BPOL)
- …
- Federal Office for the Protection of the Constitution (BfV)
- Military Counterintelligence Service (MAD)
- …

for keeping their databases up to date.



Current Status

- § 13 para. 5 fully removed
- Reason: Avoid inconsistency with data transfers due to other kinds of name changes
- Reasoning does not mention data protection
- Alongside: Plan to reintroduce data transfer for **all** name changes…
- …extending risks to, e.g., people with "foreign sounding" names

⇒ **Danger not eliminated, only delayed**

Past and Present Threats

Let's not mass-collect data of queer people

- German Nazi regime collected "Rosa Listen"—Lists used by police to keep track of (supposed) homosexual people
- Multiple German police agencies enabled to filter their databases for homosexual people until at least 2005 [Ve]
- Attourney general of Texas tried building registry of trans* people by querying name changes on driver licenses, already in 2022 [WP22]
- Steep increase of reported crimes against queer people, for example but not only in Germany
- …

Legal Perspective

Accuracy Principle, Art. 5(1d) GDPR
- Data to be accurate and up to date
- Incorrect data to be deleted or corrected

⇒ **In favor of transfering entry changes**

Data Minimisation Principle, Art. 5(1c) GDPR
- Data to be strictly limited to what is necessary
- Processing only permissible if goal cannot be reached otherwise [Roß19]
- Possibly legitimate interest regarding security

⇒ **But: Only regarding data of people already in the database**

Federal data protection commissioner: **Data Minimisation Principle outweighs Accuracy Principle here**, also taking German constitution (GG) into consideration [BfDI23].

Transfering only Relevant Changes vs. Identifying Relevant Changes?

Requirement 1: *Entry changes regarding persons unknown to a security agency must not be disclosed to this agency.*

Requirement 2: *(Parts of) the database held by a security agency must not be disclosed to others.*

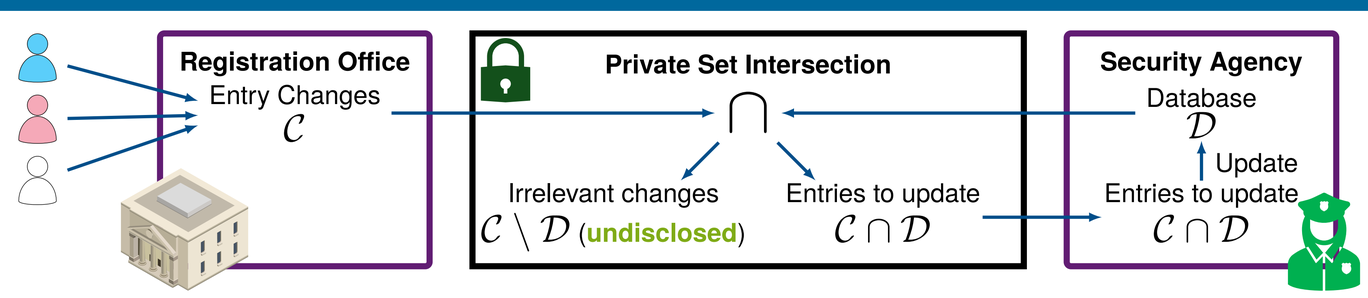
But one needs to know all entry changes and the database to identify relevant changes.

⇒ **Are the requirements mutually exclusive?**

"*The notifications about name changes cannot be limited to the persons on whom the register contains an entry, as this is routinely unknown to the […] authorities.*"
[BT96, p. 30, translated]

This mutual exclusivity—embedded in the law—is a fallacy!
Cryptography provides a solution, satisfying both requirements.

Private Set Intersection (PSI)



- PSI is practical: Password protections in Chrome and Safari [NNS+19; App21]
- Here: PSI with payload where identifying old data is used as key and further data as payload
- Fuzzy PSI [UCK+21] to compensate incomplete or incorrect entries
- Data exchange between security agencies using PSI has already been researched [TMS+22]

Limits of Private Set Intersection

- Security agencies could inject additional entries in their input to query specific people
- Misuse harder to detect due to privacy guarantees
- Automated process scales better ⇒ Potential issues get amplified

**Using PSI is better than the proposed data transfer,
but still less safe for trans* people than having no data exchange at all.**

We have to explain advanced cryptographic tools to lawmakers.
Yet, we need to be careful that they are not misused to
justify risky data exchanges. First, the question should be:
Do we need the data exchange at all?

References

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