



To: IAJGS Board of Directors and JGS Presidents

From: Jan Meisels Allen, Chairperson, Public Records Monitoring Committee

Date: August 4, 2009

Subject: Status of Public Records Monitoring Committee and Areas of Concern with Records Access

Committee Members

Jan Meisels Allen, Chairperson, Agoura Hills, California

Teven Laxer, Sacramento, California

Paul Silverstone, New York, New York

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Access to vital records worldwide, is a growing concern for genealogists and the IAJGS had a busy year in addressing and monitoring these areas of limiting access. In some instances, the committee monitors rather than takes action, to be aware if action will become necessary.

FGS/IAJGS/NGS Records Preservation and Access Committee (RPAC)

Both the boards of directors of the Federation of Genealogical Societies (FGS) and the National Genealogical Society (NGS) voted to make the IAJGS a full member and to join them in managing the committee. This is a great recognition of the IAJGS work on the committee and for our own PRAMC. It is possible other existing organizations on the RPAC may become full members later in the year.

About the RPAC: In North America, a joint committee of the FGS, IAJGS and the NGS monitors and determines action to be taken by the joint organizations on restrictions to access of public records. The Records Preservation and Access Committee (RPAC) meets three times year, face-to-face, holds monthly conference calls and shares information via e-mail. Jan Allen represents the IAJGS on the RPAC. By participating with this committee we are able to find out when legislative or regulatory actions are occurring better than if we were operating solo. This also shows our presence being accepted as a major player by others in the genealogical community.

IAJGS being a part of the RPAC enables IAJGS to "tap" into the resources of other organizations, thereby maximizing our effectiveness while preserving our limited resources.

The RPAC produced a brochure last year, "The Case for Open Records", a copy of which is in your president's packet and which also may be printed/downloaded from the IAJGS website. The PRAMC had input into the brochure and we are very proud of the work produced. The RPAC is reviewing this document to determine if it needs updating. If/when it is updated; IAJGS will advise you through the IAJGS Leadership Forum.

The RPAC produced a "white paper", entitled, *Open Access to Public Records: A Genealogical Perspective* which can be used when a state introduces egregious legislation regarding access to vital records. The paper was endorsed by the IAJGS Board earlier in 2009. You may access the white paper through a link on the IAJGS website. The white paper will be updated as necessary.

Why We Are Seeing an Explosion of Legislation Addressing Records Access

With the explosion of identity theft not only in the United States, but worldwide, we are seeing legislators take the initiative to limit access to vital records believing this will prevent identity theft. **Vital records access is not the cause of identity theft.**

Hacking into databases—of banks, data collectors, government agencies etc, such as have been reported in the press, is the cause. As genealogists, we have to educate our legislators as to the real cause of identity theft and to insist they keep access to records open.

Information contained in censuses is also of major importance to genealogists. We are seeing provisions, requiring "affirmative" responses on census forms to make the information publicly released far into the future. The public needs to be educated to understand the need for affirmative responses so that future generations may obtain the information.

The county clerks are another group that opposes access to vital records in many cases in the United States. While their public statements reflect they are proposing to reduce or eliminate access to vital records to prevent identity theft or terrorism (US: Intelligence Reform and Terrorism Prevention Act enacted in 2004- see below), some believe it has more to do with their workload level due to the increasing requests for records.

The new RFID chip in US passports, PASS cards and some states' driver's licenses have been found easy to interpret the data from any inexpensive RFID reader. The RFID chip includes Social Security Number, name, birth date, hair and eye color, and more.

Your Role in Preserving Access to Vital Records and Census Information

Achieving access to vital records and census information takes everyone's effort. Please get involved by contacting your state or national representatives when there is an access issue that affects you. "All politics is local" (per former House Speaker Tip O'Neill), and while IAJGS may submit written statements, your comments to your elected official carry more weight. The basis of genealogical research is vital records. It is not just family history, but the tracing of medical family history, and thus the need for access to records. Do your part to keep access alive. We appreciate all the support and contacts individual Jewish genealogists provided this year on various bills that limit access!

Achievements, Activities and Monitoring and Reporting Issues

Canada

Library and Archives of Canada

- The Library and Archives of Canada started to post the 1891 census. You can access digitized images of original census returns which list the name, age, country or province of birth, nationality, religion, and occupation of Canada's residents at the time of the 1891 Census. The population was to be counted as it existed on April 5, 1891.
- Library and Archives Canada has a new version of the Canadian Naturalization 1915–1932 online database. It now includes an index to the names individuals who applied for and received status as naturalized Canadians from 1915 to 1932. The new searchable version was achieved by Jewish Genealogical Society of Montreal volunteers and initial funding for the digitization was by Jewish Genealogical Society of Ottawa. <http://www.collectionscanada.gc.ca/whats-new/013-409-e.html>
- The Library and Archives Canada (LAC) launched a database on immigrants to Canada. <http://www.collectionscanada.gc.ca/databases/immigrants-canada/index-e.html>.

The database on Canadian immigration records include, immigration arriving in Quebec and Ontario as well as some pre 1865 records

British Columbia Recognizes Longer Longevity

British Columbia Vital Statistics Act recognizes people living longer and extends release dates for birth records from 100 to 120 years.

Ontario Opens Adoption Records

Starting June 1st 2009, adopted adults and birth parents can apply for information from birth and adoption records, if the adoption was registered in Ontario. Adoptees and natural birth mothers can file "disclosure vetoes" or "not contact notices" even if they do not file a disclosure veto.

Statistics Canada

Results of the 2008 Statistics Canada test on the informed consent question was released late in 2008. History: As reported previously, Canada has a census every 5 years and recently started an informed consent "opt-in" question requiring EVERY member of the household (including infants and children) to reply in the affirmative or their information would not become public in 92 years [the year 2098 for the most recent 2006 census] . "No" votes and leaving the question unanswered, resulted in the same "no" answer...and that is certainly a major concern for those studying Canada and to future genealogists! The 2006 census resulted in a lower than desired "yes" vote-- only 56% replied in the affirmative.

As a result of this low "yes" vote, many believe it was due to the way the question was stated. In May of 2008 Statistics Canada conducted a test Census on which a modified "informed consent" question was used. The modified question resulted in a 72.6% affirmative vote, however, 17.5% left the question blank (equating to a "no" vote) as well as 9.9% still voting no. This would equate in 2011 to more than 5,700,000 non-responses being equated to NO responses.

Ireland

The National Archives of Ireland established a research partnership with Library and Archives Canada to facilitate digitization, indexing and contextualization of their 1901 and 1911 census records.

The returns for 1901 and 1911 are arranged by town land (the smallest division of land) or, in urban areas, by street. The 1901 census lists, for every member of each household; name, age, sex, relationship to head of the household, religion, occupation, marital status and county or country of birth. The census also records an individual's ability to read or write and ability to speak the Irish language. All of this information is given on Form A of the census, which was filled in and signed by the head of each household.

The same information was recorded in the 1911 census, with one significant addition: married women were required to state the number of years they had been married, the number of their children born alive and the number still living. 1911 has been prepared first because the film is better quality than 1901, and they will initially focus on urban areas because of the present difficulty of finding one's ancestors in cities without a precise address. The census records for all counties for 1911 and for 1901 will be made available online throughout 2009. www.census.nationalarchives.ie. While we may not think many Jewish ancestors came from Ireland, remember some may have stopped in Ireland on their route to Canada or the United States.

New Zealand

Previously reported was New Zealand's new legislation on accessing vital records. As a result of enacting that legislation, New Zealand's government has a new website where you can search 11 million birth, marriage and death records: <http://www.bdmhistoricalrecords.identityservices.govt.nz/Home/>

There are certain limitations to accessing the records to preserve a living person's privacy: birth records are available after 100 years (they started being recorded in 1848) still births area available after 50 years (they started being recorded in 1848) marriages and civil unions are available after 80 years (have been recorded since 1854) deaths are available after 50 years or the deceased date of birth is at least 80 years ago.

There is no charge to search the records. Prices for the actual record is listed on the website in New Zealand dollars.

United States

National Archives and Records Administration

- NARA announced it proposed changes for open hours of the Kansas City, Missouri and New York City Regional Archives. For NYC it would result in a reduction of 2.5 hours per week and 30 minutes per month (for the Saturday). The Kansas City Hours would correspond with public hours for other institutions in NARA Regional offices new location.
- Every three years NARA's 10-year strategic plan is required to be updated. The "new" plan covers the period from FY2007-FY 2016. Comments are to be submitted by August 5.

USCIS New Fee-For-Service Genealogy Program

As reported last summer, the United States Citizenship and Immigration Service (USCIS), previously called the INS launched its new fee-for-service genealogy program to expedite requests. Formerly, any request was through the Freedom of Information Act (FOIA) and it was not uncommon to have to wait years for a reply. The new program takes relatively shorter time- replies in several months. When the program was first reported upon the on-line request form was not operational. Since late 2008 you may make a request on-line or snail mail. To access either the on-line or postal mail requests go to the site: www.uscis.gov/genealogy and on the right hand side is an area entitled "related links". Click on the appropriate link for on-line or postal mail requests.

HR 2171 Preserving American Historical Records Act

This is the same bill as 2008's HR 6056. It would provide the US Archivist with \$50 million for each of 5 fiscal years to be doled out to the states that provide 50% matching funds to preserve and protect historical documents, and provide education on preserving historical documents, digitizing to preserve the records. No action has taken place and IAJGS continues to monitor. Considering the financial straits of most states and the federal government it is unlikely to pass in this environment. Thus far no hearings have been scheduled.

Nationwide, states are grappling with budget deficits which have taken access to vital records off the front burner in most instances. This focus away from access may be helpful to genealogists, but as citizens we may suffer from the budget deficits in other ways. While the

volume of active bills for access issues is down, we must still be vigilant to protect "genealogy" from any unexpected surge in legislative bills.

However, the budget crisis is affecting access in that states are reducing staff, hours and closing libraries. This is exemplified by the Michigan governor abolishing the Department of History, Arts and Libraries, and transferring the state archives to the Department of Natural Resources.

California AB 130

In 2002 the California legislature enacted, at the request of the County Recorders Association, the use of informational copies of birth and death records and that indices would be created without mothers' maiden names. CA AB 130 addresses the same issue for marriage records. The rationale again is protection against identity theft. This bill passed the Assembly and is going through the Senate. Due to the budget crisis in California no hearings were held in the past several weeks and Governor Schwarzenegger said he would not sign any bills until a budget was signed. There is a hearing scheduled in Senate Appropriations on August 17. IAJGS submitted a written statement to the Senate Judiciary Committee before its hearing, which the committee passed unanimously, and has submitted a statement to be considered by the Senate Appropriations Committee. It is expected that the bill will pass and probably be signed by the governor. It would become effective January 1, 2010.

California VRIRSA System

Part of the same 2002 legislation, required developing a single, state-wide system for accessing redacted records. Information to be included on informational copies permitted under the 2002 legislation called for certain data elements to be redacted on informational copies. The system, Vital Records Image Redaction and Statewide Access is known by its acronym, VRIRSA.

At present, the VRIRSA system fulfills public requests for Informational copies of birth certificates from 1985 to present, and for death certificates from 1996 forward. As additional birth and death records are converted to computerized images over the next several years, more informational copy requests will be handled by VRIRSA. "Manual redaction is not required for records that predate the range of records currently in VRIRSA. However, informational copies must still contain the legend "INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY."

If AB 130 relating to marriage records is signed into law, marriage records will probably also go under the VRIRSA system.

CA SB 40

This bill as originally introduced would have redacted Social Security Numbers from any document filed with the county recorder. Due to VRIRSA, birth and death records are no longer included in this bill. As of this report, the bill has passed its house of origin and is awaiting the final floor vote before it goes to the governor for signature.

New York

New York City Department of Health and Mental Hygiene Restricts Access to Indices

The New York City Department of Health and Mental Hygiene (DOHMH) restricted access to the indices for vital records (birth, death) effective April 8, 2009. Only authorized personnel are permitted now to research the indices. Anyone may pay \$15 to have the staff research a specific name for three years. More years requires additional payment. As genealogists, we would like to retain the opportunity to review the indices ourselves. There is nothing as of

this report reflecting the change posted on the DOHMH website. (<http://www.nyc.gov/html/doh/html/home/home.shtml>)

The DOHMH has birth indices/records after 1909 and death indices/records after 1948. (The New York City Municipal Archives has birth indexes prior to 1910 and death indexes prior to 1949. <http://www.nyc.gov/html/records/html/vitalrecords/home.shtml>.)

In 2008 the DOHMH adopted a resolution to repeal and reenact Article 3 of the New York City Health Code: see:

<http://www.nyc.gov/html/doh/downloads/pdf/notice/article-3-adoption-june-2008.pdf>

Section §3.25 states the amendment is for the protection of the privacy of persons who are subjects of the information while providing for the conditions under which information may be disclosed. Also §3.27 which permitted access to the printed indices of vital statistics records has been repealed in its entirety. This was the section that permitted anyone to review the indices available at the DOHMH. The stated rationale for repeal is due to concerns over abuse in access which can lead to identity theft and security risks.

The resolution states while this is a Department determination, they are taking into consideration the federal regulations for the Health Insurance Portability and Accountability Act (HIPPA). This is not the usual interpretation of HIPPA which is the standard for protecting the privacy of patient medical records and other health information provided to health care providers.

As all "politics are local" the PRAMC reported this access issue on the IAJGS Leadership Forum and JewishGen Discussion Group and asked the JGS, Inc. (NYC) to take the lead in addressing access concerns with the appropriate governmental entities. A coalition of local area genealogical societies was formed: Association of Professional Genealogists – NY Metro Chapter, JGS, NY, German Genealogy Group, Italian Genealogical Group, New York Irish History Roundtable, and Patchogue-Medford Library Genealogy Research Group—other groups might have been included. To my knowledge they held one meeting thus far. In the interim, the then-Commissioner of Health and Mental Hygiene, Dr. Thomas R. Frieden, (who adopted this order) has since been appointed by President Obama to head the Centers for Disease Control and Prevention. The newly appointed Commissioner is Dr. Thomas A. Farley.

AB 784

This bill is reintroduced from last year where it never got out of committee. It would open death records by redacting Social Security numbers from the death records. This year, the bill is still in its committee of origin with no hearings yet scheduled.

New Jersey AB 326

We reported this bill in the past two years and it is the third-session attempt by the sponsors to get it enacted. New Jersey's legislative session is two years (2008-2009). Nothing has happened on this bill since March 2008 and while it remains a bill that is considered "live", we will continue to monitor it.

As promised to the genealogical community in last session's (2006-2007) version (in 2006-2007 it was A 1390) the author, Assemblywoman Quigley, did incorporate in the current introduced version, the existing state limitation on age of records for non-certified, genealogical copies: births occurring over 80 years, over 50 years for marriages and over 40 years for deaths. The bill was amended at the March 6 hearing and by the General Assembly on **March 13, 2008 and to date, no further action has been taken.**

The 2008 amendments change the 80-50-40 year public availability to 100 years after a birth, 50 years after a marriage, civil union or domestic partnership and 40 years after death or fetal death and transfer the records to the New Jersey State Archives and Records Management. The genealogical community did **NOT** recommend the year change. The newly defined "current vital records" are retained as public records, albeit as a private/confidential public record. The bill now eliminates the existing informational or non-certified copies of vital records. In addition, a provision requested by IAJGS, now exempts genealogists from the bill's prohibition of sharing information, which would otherwise have made it a crime for our sharing of obtained information with family, friends or clients. The bill goes to the Assembly floor for a vote and if it passes will be heard in the Senate.

Pennsylvania

Open Records Act

The newly enacted (2008) Open Records Act became effective January 1, 2009. Information on this was posted to the IAJGS Leadership Forum and JewishGen Discussion Group in late December 2008 and in January 2009. The law declared that all state, county, and local government records are public unless specifically exempted. The law created a new Office of Open Records for Pennsylvania <http://openrecords.state.pa.us/portal/server.pt> To get more information I contacted the senior attorney for the new department and learned the charges per page (\$0.25 maximum) do NOT apply to marriage and death records and due to other established law, birth and adoption records are NOT covered under the new law.

From an article in the Philadelphia Inquirer posted in April of this year it appears that Governor Rendell's administration is going out of its way to block public access to government documents. The article quoted a letter from Commissioner Mutchler to the governor "Some agencies ... are using the Right-to-Know law as a shield with which to block information rather than a tool with which to open records of government."

HB563

This bill requires the Department of Health to prepare an electronic database for all vital records. It would also require the transfer of all birth and death records after 100 years to the Pennsylvania Historical and Museum Commission. The bill is sitting in its original committee.

HB 931

This bill would establish an Internet-based electronic death registration system for creation, storage and transfer of the information. It would also establish, for birth and death records, to become public records and the information would become available at no fee, on an Internet-system maintained by the Department of Health. The Department of Health would be required to establish and maintain an Internet based-system for birth and death certificates as a searchable database open to the public. The database would be subject to any limitation on access and release required by other existing laws. In addition, the Department would establish and maintain a searchable index database of all death records between 2-50 years of age. A similar bill was introduced last year with no hearings held. PRAMC will send letters of support to Governor Rendell and key legislators once the legislature focuses on other than the budgetary issues.

Pending Areas of Concern

There are areas of concern that did not require us to take any action—as of this report—but are being watched in case action becomes necessary.

United States HR-10/SB 2845 Public Law 108-458 (2004)

The Intelligence Reform and Terrorism Prevention Act of 2004 Act passed by Congress and signed by President Bush, includes a provision addressing the states and who may have access to birth certificates. The goal is to prevent terrorists from obtaining birth certificates and using them fraudulently to acquire other identification documents, such as driver's licenses and passports.

While the law required the Secretary of Health and Human Services to promulgate regulations addressing the birth certificate provision within one year (December 2005) to date no proposed regulations have been published. Rumor has it that the overall cost to comply with what the government is planning may be excessive and unaffordable-which may be why the proposed rules are delayed. We have no idea when/if any regulations will be forthcoming. We continue to monitor this and the IAJGS PRAMC will you as soon as the proposed regulations become available by posting a notice on both the IAJGS Leadership Forum and JewishGen Discussion Group. This will enable JGSs to "weigh in" on the language to permit for genealogical purposes, access to birth records by the states under the stated provisions.

We are concerned that some states may try to enact legislation restricting access to birth records before the proposed regulations are promulgated. In addition, some "over zealous" states may decide, "If it's good to restrict access to birth records, it is also good to restrict access to marriage and death records". In some jurisdictions, the county clerks are proactive in sponsoring legislation with just this sort of over zealous reaction.

Uzhgorod Archives (Transcarpathia part of Ukraine formerly Hungary/Slovakia)

Jan Meisels Allen, PRAMC Chairperson, and H-SIG member is following this situation for the PRAMC. Five years ago, H-SIG brought to PRAMC's attention the problem with accessing records from the Uzhgorod Archives. As reported previously, PRAMC consulted with the United States Holocaust Memorial Museum, and as a result decided to let the newly democratically-elected government of the Ukraine some time to deal with these types of issues, and therefore, no action has been taken, but remains on the monitoring list. Due to continued governmental unrest and changes within the hierarchy of the Archives we do not think it is the correct time to pursue this, as it will not be accepted as critical with everything the new government is addressing.

In addition to the above, the PRAMC reviewed a number of proposed bills which, after review and discussion we felt did not need our attention at the time, as the language was acceptable for genealogy, or the politics were such we knew the bills were not going to be moving through the legislature.

Thank you to JewishGen

IAJGS PRAMC thanks JewishGen for permitting us to make informational announcements only, on its discussion group, of legislative or regulatory items of genealogical interest with noting that further information is available on the IAJGS website current Legislative Alert. We would not be as successful as we have been, without the cooperation of JewishGen in getting the individual genealogist informed and ready to assist by contacting their local representatives to amend egregious legislation for genealogical research.

If you aware of other areas of access denial, please let us know. Your eyes and ears is how we learn of many situations that require monitoring or action.

Respectfully submitted,

Jan

Jan Meisels Allen

IAJGS Director and Chairperson, IAJGS Public Records Access Monitoring Committee