



To: IAJGS Members-2014 Annual Session

From: Jan Meisels Allen, IAJGS Vice President
Chairperson, IAJGS Public Records Access Monitoring Committee

Re: Public Records Access Monitoring Committee

Date: June 4, 2014

Committee Members

Jan Meisels Allen, Chairperson, Agoura Hills, California
Teven Laxer, Sacramento, California
David Ockene, Mount Vernon, NY
Kenneth R. Ryesky, Esq., East Northport, NY
Paul Silverstone, New York, New York
Joel Spector, Cherry Hill, New Jersey
Catherine Youngren, Coquitlam, British Columbia, Canada
Marlis Humphrey, *ex officio* Melbourne Beach, FL

Access to vital records worldwide is a continuing growing concern for genealogists and the IAJGS had a busy year in addressing and monitoring these areas of limiting access. Without access to vital records and census documents, genealogists would be unable to research their family information. Therefore, records access is pivotal to maintaining our passion for genealogy-whether as a business or hobby.

In some instances, PRAMC monitors rather than takes action, so that we can assess whether action may become necessary. Informational postings on the “new” IAJGS Records Access Alert, JewishGen Discussion Group and the JewishGen Blog are posted when genealogical collections of interest are first released by various countries’ National Archives, subscription sites and others as well as items of record interest not reported below.

The PRAMC continues to review matters affecting access to vital records and census records as a result of government action, worldwide, and cautiously selects issues on which IAJGS may take a proactive stance.

IAJGS Records Access Alert

Last year, the IAJGS created the Records Access Alert for postings regarding governmental or repository actions that enhance or reduce access to genealogically relevant records. The Records Access Alert also includes postings regarding advocacy when it is determined that action rather than monitoring is required. This is an announcement list, and one needs to be subscribed. It is open to all member JGSs/JHSs/SIGS, their members, JewishGen, and all Special Interest Groups (SIGs) members that are hosted by them. All organizations should have at least one member subscribed. To subscribe go to: <http://lists.iajgs.org/mailman/listinfo/records-access-alerts> and follow the instructions to enter your email address, full name and JGS/JHS/SIG/JG affiliation. You will receive an email response that **you have to reply** to or the subscription will not be finalized. All postings are archived and may be accessed at: <http://lists.iajgs.org/mailman/private/records-access-alerts/>. As of the beginning of June, we have approximately 265 subscribers, but 16 IAJGS member organizations have not yet subscribed. Since last year’s annual meeting, the Records Access Alert has had 107 postings on records access. Previously such postings were on the IAJGS Leadership Forum.

IAJGS Lead Article on Records Access in Avotaynu

Jan Meisels Allen was approached by the editor of *Avotaynu* last fall to write the lead article: *Restriction of Access to Records Is Increasing Threat to Genealogical Research*. Members of the PRAMC had input into writing the article. It appeared in the Volume XXIX, Number 3, Fall 2013 issue. It can be accessed on the IAJGS website at: <http://www.iajgs.org/pramc/legislation.html>.

International Holocaust Remembrance Alliance

Jan Meisels Allen was invited to talk at an International Holocaust Remembrance Alliance (IHRA) Workshop in Berlin, Germany, in June 2014 on genealogists' access to holocaust and holocaust-era records.

The IHRA is an intergovernmental body whose purpose is to place both national and international political and social leaders' support behind the need for Holocaust education, remembrance and research.

IHRA was initiated in 1998 by former Swedish Prime Minister Göran Persson. Persson decided to establish an international organization that would expand Holocaust education worldwide, and asked President Bill Clinton and former British Prime Minister Tony Blair to join him in this effort. The Declaration of the Stockholm International Forum on the Holocaust was the outcome of the Forum's deliberations and is the foundation of the International Holocaust Remembrance Alliance. IHRA currently has 31 member countries and five observer countries.

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

The IAJGS is one of the supporting/managing members of the RPAC. The other managing members are the Federation of Genealogical Societies (FGS) and the National Genealogical Society (NGS). The Association of Professional Genealogists (APG), the Board for Certification of Genealogists (BCG), International Commission for the Accreditation of Professional Genealogists (ICAPGen), and the American Society of Genealogists (ASG) also serve as participating members. By invitation, RPAC also includes participation from a few commercial providers of genealogical information. The committee is chaired by Janet A. Alpert, past president of the NGS.

About RPAC: In North America, a joint committee of the FGS, IAJGS and the NGS monitors and recommends action to be taken on restrictions to access of public records. RPAC holds monthly conference calls and shares information via e-mail. Jan Allen and Ken Ryesky represent the IAJGS on the RPAC and Jan is the managing IAJGS member. By participating with this committee, IAJGS is better able to find out when legislative or regulatory actions are occurring that might need our attention. As a result of our collaboration with RPAC, IAJGS is able to maximize our effectiveness while preserving our limited resources.

Since last year's IAJGS conference, RPAC held two State Liaison training sessions online. This included a "tool kit" demonstrating how a bill becomes a law in their state, who to contact, how to build coalitions, and examples of recent successful activities. Jan Meisels Allen developed the legislative tool kit portion of the RPAC program. She participated on the RPAC Records Access Panel presentation at the NGS annual conference in Richmond, VA, May 2014 and will participate on a similar panel presentation via videoconferencing on a similar panel presentation for the FGS when they hold their conference in San Antonio, TX later in August. (Jan also participated via video conference on the RPAC Records Access Panel at the FGS 2013 conference in Ft Wayne, IN.)

At the 2014 IAJGS 34th International Conference on Jewish Genealogy, IAJGS is sponsoring a session on records access, ***Genealogy Under Fire: Government Actions to Impede Access to Records YOU Need*** with Jan Alpert, RPAC chairperson, Teven Laxer, and Jan Meisels Allen. It is scheduled for Wednesday July 30 at 9:00 AM and we hope many of you will attend.

Genealogists' Declaration of Rights

Over the last few years, access to public records has been threatened over concerns about privacy and identity theft. RPAC launched a *Genealogists' Declaration of Rights* at the recent National Genealogical Society conference in Richmond Virginia. The *Genealogists' Declaration of Rights* is a statement advocating open access to federal, state and local public records. Over 500 conference attendees signed this Declaration in books with sign-up pages for individual states. The intent is to attach the *Declaration* with the appropriate state pages along with letters on specific access records issues to demonstrate to elected officials and regulators that their constituents care about records access.

All three sponsoring organizations' Board of Directors—FGS, NGS and IAJGS-- unanimously voted to endorse the *Genealogists' Declaration of Rights*. To read about this, including an RPAC press release and **most** importantly a link to digitally sign the *Genealogists Declaration of Rights* go to the IAJGS website: <http://iajgs.org/ISigned.html>. The electronic version of the Declaration is available at <http://bit.ly/gen-declaration>.

The Declaration will also be available at the IAJGS 34th International Conference on Jewish Genealogy in Salt Lake City, UT 27 July-1 August –at a table next to the IAJGS table. It will also be available at the FGS conference in San Antonio, TX 27-30 August. As of the date of writing this report, there were approximately 1,880 electronic signatures gathered (in addition to the 500 hard copies gathered at the NGS conference).

The Southern California Genealogical Jamboree being held June 5-8 will have a table asking Californians to sign the Declaration. Residents of other states will be encouraged to sign online. We are encouraging other state and local genealogical conferences to also make available a place to have sign-ups for the Declaration.

During the NGS Luncheon on May 10, copies of the over 500 signatures on the *Genealogists' Declaration of Rights* were presented to Patricia Potrzebowski, Ph.D., the executive director of the National Association of Public Health Statistics and Information Systems (NAPHSIS) a national association of state vital records and public health statistics offices which is based in the Washington DC area. NAPHSIS endorsed the 2011 Model Act revisions.

RPAC debated about making this an international *Declaration*, but with privacy laws varying by country, it was decided to go forth for US-only at this time. The IAJGS Board of Directors is very aware that 1/3 of its members are outside the United States and encourages genealogical societies outside the United States to launch a similar declaration in their countries—in cooperation with other genealogical organizations in their home country. IAJGS is willing to assist with these outside US launches.

Why We Are Seeing an Explosion of Legislation and Government Action Addressing Records and Archives 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.

Genealogical websites have been blamed for causing identity theft by permitting access to the Social Security Death Index (SSDI). However, the main cause of identity theft is hacking into databases—of banks, data collectors, government agencies, merchants, etc. As genealogists, we have to educate our legislators as to the real cause of identity theft and to insist they keep access to public records open.

In the United States, with the recent changes in the health care law and how health care is being provided, a side effect is the increase in: the amount of personal information in health care databases, the size of those databases, the number of people who access those databases, the

amount of information transferred from one database to another, and the lessening of the degree of credentialing imposed upon the typical person who has legitimate access to those databases. It portends for a greater possibility of potential problems with personal information being accessed.

Unfortunately, severe local and national government budget shortfalls have led to increases in the cost of researching and obtaining government records, and may continue to occur. Due to the worldwide fiscal situation, governments are reducing funding for national archives and in some instances merging their archives with other government agencies. We started seeing this in New Zealand in 2010 and since then have seen it in Canada with the Library and Archives Canada—the threat in Oklahoma when they attempted to consolidate the Oklahoma Historical Society with the Department of Tourism and more. See more below.

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" and while IAJ GS 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.

Several years ago, we asked for each society to identify a key person who would monitor records access in their area and report to the PRAMC. So far, only two societies advised us that such board appointments have been made. This is an activity all of us must be involved with—without access to records, we cannot properly research our genealogy!

Several Major Issues Confronting Genealogists

There are three main issues to which PRAMC devoted many hours, as well as the usual monitoring and letter writing on specific issues.

European Union [EU] Proposed Data Privacy Regulation

As reported to you last year, the EU Proposed Data Privacy Regulation is of concern to genealogists. The provision includes the right to be forgotten as well as the right of erasure. While we have been told by Ministers of Justice in several EU member countries that the **intent** is to protect the living and therefore vital records and similar documents should not be adversely affected, this is not written in the Proposed Data Privacy Regulation. The PRAMC put forward a proposal to the IAJGS Board to write to each of the 28 EU Ministers of Justice. The IAJGS Board unanimously concurred with PRAMC's concerns and the letters were written which included our "right to be remembered" relating to holocaust victims among other issues. The letters were sent over the name and signature of IAJGS Secretary Mark Nicholls as we believed a resident from an EU member country would carry more weight. We heard back from only a handful of Ministers—and the most positive response was from the UK.

Several months ago The EU Parliament—one of the two chambers of the EU bi-cameral legislature adopted the Proposed Data Privacy Regulation. The other chamber—the Council of the European Union—is expected to address this regulation in the summer. The EU elections took place in late May. Not only will the size of the Parliament be reduced from 766 to 751 members, but there will be an increase in right-leaning members who are not advocates of the EU. Several EU members still have some concerns with the impact of some of the provisions.

In mid-May 2014, the EU Court determined in a case brought by the Spanish data privacy directives against Google, that Google and any Internet data aggregator follow the *Right to Be Forgotten* in specific cases including deletion of links to embarrassing legal records—even if what is reported is true. The decision included in its summary that "the effect of the interference with the person's rights is heightened on account of the important role played by the Internet and search

engines in modern society.” Spain and Austria asked the EU Court to review the data privacy directive “to examine the validity of the directive, in particular in the light of two fundamental rights under the Charter of Fundamental Rights of the EU, namely the fundamental right to respect for private life and the fundamental right to the protection of personal data”. The European Court struck down the data retention directive that was passed as part of anti-terrorism measures in 2006, after attacks in London and Madrid. The data retention directive affects internet and phone surveillance.

It’s likely that the conversation of the “right to be forgotten” will spread outside the EU. In the United States, last fall, the state of California enacted legislation, “Privacy Rights for California Minors in a Digital World”, which includes a provision known as the “Delete Button” or “Eraser” law, which allows minors under 18 to request that companies delete specified information that the requestor had previously posted online. That law becomes effective January 2015.

United States: Death Master File (DMF) Commercial Version: Social Security Death Index (SSDI)

To most everyone’s surprise, the Bi-Partisan Budget Act included a section 203 which addressed the Death Master File and restricts who may have access to the DMF leaving it to the Secretary of Commerce to determine who may be certified for access. The genealogical community had been submitting statements to Congress over a three year period (including the Fall of 2013) trying to get them to address our concerns. The genealogical community was never invited to testify at any of the Congressional hearings. The law was signed December 26, 2013 and gave the Secretary of Commerce 90 days to implement the required provisions. The law also prevented access to the DMF for three years from date of death unless the person is certified starting March 26, 2014.

The National Technical Information Service (NTIS), an agency of the US Department of Commerce, held an informational hearing March 4, 2014, and requested input from the public. IAJGS submitted its statement. The Department held a further public hearing later in March and IAJGS not only submitted a statement, but submitted comments during the on-line hearing and public comment period.

The genealogical community requested that forensic genealogists who met certain criteria should be certified. Only two forensic genealogists have been certified thus far.

The criteria are the same as those requested by the genealogical community over the past three years in our statements to Congress when hearings were held on the Death Master File, and are:

- a. Assisting the Department of Defense in locating heirs for the repatriation of remains from previous wars.
- b. Assisting county coroners in the identification of unclaimed persons.
- c. Working with attorneys in locating missing and unknown heirs involving estates, trusts, real estate quiet title actions, oil and gas and mineral rights, and other similar needs.
- d. Tracing and tracking heritable medical conditions where finding distant cousins can facilitate early treatment and possibly prevent a premature death.
- e. Repatriating stolen art and artifacts.
- f. Identifying American Indians, Native Alaskans and Native Hawaiians to determine eligibility for tribal benefits.

Both forensic genealogists and heir researchers would be working under a contract with a government agency or law firm.

Unfortunately, it was found after the first forensic genealogist was certified, that the new DMF is severely restricted in the type of data available only to the first and last name of the deceased, the birth date, death date and Social Security Number (SSN). To search the new database, one must know the first and last name of the deceased AND the SSN. There is no middle name or middle

initial, no state of issuance of SSN, nor location of last payment sent—all invaluable data for the genealogist. In addition to the \$200 certification fee, the charge for a single user purchasing the new DMF is \$995- out of the economic range of most individual genealogists.

RPAC has developed a three-pronged approach: (1) pursue certification for forensic genealogists with the Department of Commerce; (2) continue to present evidence to the various congressional committees that tax fraud due to identity theft of the deceased is a problem that has been solved using other means, and (3) propose a technical amendment that will return the non-secure data elements previously in the SSDI in the new-DMF until Section 203 is repealed.

The reason we say that the problem of identity theft for the deceased has been solved is two-fold. First, the IRS has established filters that significantly limit the possibility that an improper person will receive fraudulent tax refunds. Secondly, a 2011 Treasury Inspector General for Tax Administration (TIGTA) report showed only two percent of all fraudulent IRS tax filings were based on the deceaseds' fraudulent filings. This report reflects a time period before the IRS implemented their filters and prior to the genealogical websites placing embargo dates from 3-10 years before one can access the commercial version of the DMF known as the Social Security Death Index (SSDI).

Focus should be on the identity theft against the living who are not included in the DMF.

United States: 2011 Model Vital Records Act Revision

The Model State Vital Statistics Act was developed to serve as a model for states in preparing laws and regulations on the collection and publication of vital statistics. The Model Act currently restricts access to birth records for 100 years and death, marriage, and divorce records for 50 years. A working group consisting of state and local vital statistics executives drafted the 2011 Revision of the Model Vital Statistics Act, which would extend the restriction periods to 125 years after the date of a live birth, 75 years after the date of death, and 100 years after the date of marriage or divorce.

The Department of Health and Human Services (HHS) put the 2011 Revision “on hold” in April 2012. Impatient for DHHS approval, the National Association for Public Health Statistics and Information Systems (NAPHSIS) endorsed the Model Act in 2011. Frustrated by the delay in approval at the federal level, several state vital records officials introduced the 2011 Model Act in their state legislatures. NAPHSIS did not have much success in the 2013 legislative arena, and now also focuses on the regulatory route to get some of their Model Act adopted by the states. Adoption of all or part of the Model Vital Records Act is voluntary by each state.

Oregon: The 2011 Model Vital Statistics Act was introduced in Oregon in 2013. Although other provisions of the bill passed, there was no change to the existing vital records closure periods. In early 2014, the genealogical community found that the provision addressing the indices having the same embargo period as the records was something the genealogical community had not addressed during the 2013 hearings and will try in 2015 to have amended. This will be an uphill battle.

Oklahoma: Even though the records access bill was passed in 2011, it was not until 2013 that a major error in the law was noticed when a genealogist tried to obtain a death record. The poorly drafted law permits only the named individual to request death records (in other words only the deceased can request their own death record.) An attempt was made to modify the statute in 2014, but it resulted in the same wording as before—that only the named person may request their own birth or death records. The Model Vital Records Act provisions were added for embargo dates. The Oklahoma genealogical community felt at least records would eventually be accessible. Under the original statute, there was no time when anyone other than the named individual could access the records. The bill was signed into law in April 2014. The Oklahoma

Genealogical Society will be working again next year on a more functional law with shorter embargo periods.

Selected Achievements, New Access to Records, Activities, Monitoring and Reporting Issues

[To read all major activities go to the Records Access Alerts Archives]

Australia

Biographical Database of Australia (DBA) launched with 500,000 records. The first batch of records contains convict, muster, census, marriage and burial records from New South Wales 1788-1828 and for Norfolk Island and Tasmania 1802-1811.

Canada

The Library and Archives of Canada (LAC) forged a 10-year agreement with Canadiana.org to digitize about 60 million images from its numerous collections.

LAC released a new version of their on-line Naturalization Records 1915-1951. The nominal index has been extended with the addition of more than 93,000 names and now covers the years from 1915 to 1939, inclusively.

LAC Blog published the second in a series on immigration and citizenship sources that they hold. This second part explains how to find arrivals between 1865 and 1935. Passenger lists include such information as the country your ancestor came from, his or her occupation and the intended destination in Canada.

Ireland

The National Archives of Ireland have added what they call “census fragments and substitutes”—these cover the Irish censuses pre 1901. Censuses were taken in Ireland every 10 years starting in 1821.

Norway

The National Archives of Norway digitized thousands of records including census records, parish records, probate records, court records, and emigrant lists. The website is in both English and Norwegian.

The *Arkivverket Digitalarkivet*, part of the national archives of Norway, has posted the 1910 census on their website. Also available on the website are the 1865 and 1891 scanned census records.

United Kingdom

Census of England and Wales Office for National Statistics (ONS) Consultation Report. England and Wales have conducted a census every ten years beginning in 1801—except in 1941. (The General Register Office Scotland (GROS) and the Northern Ireland Statistics and Research Agency (NISRA) are responsible for the census in Scotland and Northern Ireland.) The UK Statistics Authority announced that the ONS’s National Statistician recommended to the Board of the UK Statistics Authority a predominantly online census in 2021, supplemented by the further use of administrative and survey data. The Board announced they have accepted and endorsed this recommendation.

United States

Library of Congress Website

Congress.gov will become the official source for federal legislative information. It will replace the nearly 20-year-old THOMAS.gov site with a system that includes platform mobility, comprehensive information retrieval and user-friendly presentation. It currently includes all data sets available on THOMAS.gov except nominations, treaties and communications. These data sets will be added throughout 2014. Until that time they are still accessible

through <http://thomas.loc.gov/home/thomas.php>. THOMAS.gov will be permanently retired by the end of 2014.

American Joint Distribution Committee

The American Jewish Joint Distribution Committee (JDC) indexed and digitized World War I Prisoner of War [PoWs] Cards. This is a collection of Jewish prisoners of war in Siberia in 1920. The soldiers, depicted on the more than 1,000 cards that comprise the collection, served in the German and Austro-Hungarian armies.

National Archives

Due to ongoing budget reductions, Archivist of the United States, David S. Ferriero, announced the closure of the Anchorage, Alaska Regional Archive and the consolidation of the two sites near Philadelphia, PA into one site. Both of these will occur this year. Within the next two years the two regional centers in Fort Worth, Texas, will consolidate into one site.

California

Proposition 42 was approved by the electorate on the June primary ballot. It requires all local agencies to comply with the California Public Records Act (CPRA) and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to the acts. The initiative would eliminate the state's responsibility in paying local governments for their costs related to implementing these laws. The California Public Records Act (CPRA) provides that public records are open to inspection at all times during the office hours of state or local agencies that retain those records and that every person has a right to inspect any public record.

Connecticut

Current Connecticut statute states that genealogists have access to all vital records in the custody of any registrar of vital statistics, including certificates, ledgers, record books, card files, indexes and database printouts, "during all normal business hours." Legislation was introduced that would delete "during all normal business hours" and would instead leave access at the registrar's discretion. SB 414 was successfully defeated due to the work of the genealogical community.

Maine

After several years of waiting for proposed regulations addressing access to vital records, the Maine regulatory agency convened a stakeholders committee. Jan Meisels Allen was invited to participate on the committee, representing IAJGS. Thus far, there have been three versions of proposed regulations that the stakeholders have reviewed and commented upon. While we were successful in dropping the initial proposal which would have charged a fee to genealogical societies for them to be listed in order that their members could apply for a researcher card—to avoid the embargo periods, other provisions remain a concern. These include making the indices subject to embargo periods similar to the records; limiting access to the indices; and potentially requiring genealogists to make appointments to access the records in the offices of the town clerks. A major concern is that while the statute specifically states state and town clerks **must** provide access to genealogists, the regulators assert the assistant Attorney General has prohibited any "musts" making it permissive on the part of the clerks to provide genealogists access. IAJGS continues to work with the stakeholders group and when the Notice for Proposed Rulemaking is posted, IAJGS will submit further written statements. The proposed fee for the researcher card has not yet been revealed by the regulators.

New Jersey

A recent bill was signed into law giving adoptees greater access to their birth records. The records themselves will not be opened until 2017, giving birth parents time to make their initial declarations, which they could change later. Under a 1940 law, adoption records were sealed.

New York

New York State Chief Surrogate Court Justice issued an Order restricting public access to the records included in probate files. These include documents and procedures under New York State Surrogates Court Procedure Act 17 and 17a- involving guardians and custodians, guardians of mentally retarded and developmentally disabled persons, death certificates, tax returns, documents containing social security numbers, inventory of assets and firearms inventory.

There are currently several bills before the NY Legislature that would allow adoptees greater access to their birth records as well as medical histories and requiring birth parents to provide medical information to the adoption medical information registry.

Oklahoma

Legislation was introduced that would have consolidated the Oklahoma Historical Society, Oklahoma Arts Council and the Oklahoma Tourism Board into a new combined agency. The legislation died in committee. However, the Tourism Department has already started working on a "feasibility" study for next year, and a new bill will be introduced in the next legislative session if Governor Fallon is re-elected as expected.

Pennsylvania

In December 2011, PA SB 361 was signed into law allowing birth records to be available 105 years from date of birth and death records 50 years from date of death. Another provision was to transfer the certificates to the Pennsylvania State Archives once they become open records--all deaths certificates from 1906 to 1961 and birth certificates from 1906. As each year goes by, another year's worth of birth and death certificates would become open records. The State Archives signed a contract with Ancestry.com to have the records scanned and made available online. The 1906–1924 death records are now online on Ancestry.com. The records will have free access for Pennsylvania residents.

Jan

Jan Meisels Allen
Chairperson, IAJGS Public Records Access Monitoring Committee