



To: IAJGS Members- 2016 Annual Session

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

Re: Public Records Access Monitoring Committee-Annual Report

Date: 7 July 2016

Committee Members:

Jan Meisels Allen, Chairperson, Agoura Hills, California
Teven Laxer, Sacramento, California
David Ockene, Mount Vernon, NY
Kenneth R. Ryesky, Esq., Petach Tikva, Israel
Paul Silverstone, New York, New York
Joel Spector, Cherry Hill, New Jersey
Amy Wachs, Cleveland, Ohio
Catherine Youngren, Coquitlam, British Columbia, Canada
Marlis Humphrey, *ex officio*, President IAJGS, Melbourne Beach, Florida

The Public Records Access Monitoring Committee (PRAMC) had a busy year addressing and monitoring issues affecting access to public records. The ability of genealogists to research their family information is dependent on access to vital records, census documents, and other records. Therefore, records access is a necessity to our passion for genealogical research-whether as a business or hobby.

In some instances, PRAMC monitors legislation and regulations rather than taking action in order to assess whether action may become necessary. Information is posted on the IAJGS *Records Access Alert* as soon as it becomes available.

Late last year, the JewishGen Operations Committee advised us that we are no longer permitted to post notices about pending matters on JewishGen if the action is not a **final adoption** of a law, rule or court decision. We are permitted to post a one-line summary of what has been posted on the IAJGS *Records Access Alert* the beginning of the month following the previous month's postings. For example, the JewishGen posting in the first week of June 2016 covered the IAJGS *Records Access Alert* postings for all of May 2016. Therefore, it is of the utmost importance that at least one member of each society is subscribed to the *Records Access Alert* in order for societies to keep apprised of the critical actions addressing records access. There are eleven IAJGS members that do not have any members subscribed. As a result of the action taken by JewishGen, the IAJGS Board of Directors opened up subscriptions to the IAJGS *Records Access Alert* to any genealogically-affiliated person, no longer restricting subscriptions to those who are members of IAJGS member societies and subscribers of JewishGen. As of this report, there are 654 subscribers.

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.

Accomplishments Summary

These are highlights of what PRAMC worked on since last year's report:

Records Access Alert:

- 223 *Records Access Alert* postings on 16 countries since the 2015 IAJGS Annual Meeting.
- 654 subscribers to IAJGS *Records Access Alert*- more than doubled from 2015.

- IAJGS promoted subscribing to the *Records Access Alert* at RootsTech, NGS and Southern California Genealogical Jamboree where IAJGS had booths in the exhibit halls.
- *The Legal Genealogist*, Judy Russell, promoted the *Records Access Alert* in her blog.
- PRAMC members developed a glossary of terms and FAQs which are now placed on the IAJGS website.

Presentation/Panels:

- Three conference panel presentations: FGS/RootsTech 2015 which gave RPAC a larger audience, FGS September 2016 and NGS 2016.
- IAJGS Panel at 2016 IAJGS Conference with Teven Laxer and Jan Meisels Allen.

Submitted Statements and Monitoring Issues:

- IAJGS submitted a statement on proposed changes to Kansas Supreme Court Rules 106 and 108 regarding limiting public access to marriage records.
- IAJGS submitted a Statement on Maine Data, Research, and Vital Statistics (DRVS) New Proposed Consolidation Chapters Four and Eight 10-146 Drafted Rules Dated 1 October 2015.
- IAJGS submitted a statement on Maine Data, Research and Vital Statistics proposed Genealogical Research Card Disclosure Agreement.
- IAJGS submitted a statement on USCIS proposed increase in fees to their genealogy program.
- IAJGS PRAMC participated throughout the year as a stakeholder on the Maine State Department of Health, Office of Vital Records committee.
- Worked with Brooke Schreier Ganz on Reclaim the Records.
- Reported on numerous international issues including Argentina, Australia, Brazil, Canada, European Union, India, Israel, Japan, New Zealand, Norway, Russia, South Africa, South Korea, Turkey, UK and United States legislation and regulations.

Genealogists' Declaration of Rights and RPAC:

- Collection of signatures on the Genealogists' Declaration of Rights—current total 10,750.
- IAJGS, as a sponsoring member of the Records Preservation and Access Committee (RPAC), endorsed RPAC's change in membership in the National Coalition for History to a full member-starting in 2017.
- IAJGS agreed for RPAC to sign the Joint Statement on Access to State and Local Records promoted by the Council of State Archivists (CoSA).
- Worked with RPAC on Congressional Recess Talking Points to be used by constituents regarding the problem of access to the Death Master File and need for Congressional amendment to Section 2013 of the Bi-partisan Budget Act of 2014.

Recognition of PRAMC Work in Law Review:

- The Mitchell Hamline Law Review recognized the value of the DMF to genealogists and the concerns of the IAJGS. The review quotes from Jan Meisels Allen's 2013 article in *Avotaynu*, 15 Oct 2014 *IAJGS Records Access Alert* as well as some of PRAMC's handouts. [42 Mitchell Hamline L. Rev. 791 (9 May 2016)]

IAJGS Records Access Alert

The IAJGS created the *Records Access Alert* in February 2013 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, for which subscriptions are required. It is open to anyone affiliated with a genealogical organization, not only members of IAJGS or JewishGen and its SIG subscribers. 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 genealogical 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 date of this report, we have 654 subscribers, but eleven IAJGS member organizations have not yet subscribed. Since last year's

annual meeting, the *Records Access Alert* has had 223 postings on records access covering 16 countries. Non-public access items are posted to the IAJGS Leadership Forum.

FAQ and Glossary of Terms for *Records Access Alert* Subscribers

PRAMC members developed a Glossary of Terms and Frequently Asked Questions (FAQs) for our readers. They can be accessed on the IAJGS website: <http://www.iajgs.org/blog/legislation/pramc-faq/> and <http://www.iajgs.org/blog/legislation/pramc-glossary/>. There is also a new email address for subscribers to the *Records Access Alert* to contact members of the PRAMC with any questions: pramc@iajgs.org.

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

The IAJGS is one of the supporting/managing members of the RPAC. The other supporting 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. IAJGS has been a major contributor of signatures at IAJGS Conferences, the SC Jamboree, and IAJGS member societies around the US.

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. During 2015, PRAMC member Ken Ryesky, who had been IAJGS's second member on RPAC relocated to Israel. Later in the year Amy Wachs was added to the PRAMC, and as the second IAJGS RPAC representative. Starting in 2015, Teven Laxer has monitored legislation in California for RPAC, as well as IAJGS. 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, Jan Meisels Allen participated on the RPAC Records Access Panel presentation at the NGS annual conference in Ft. Lauderdale, FL, May 2016 and will participate on a similar panel presentation via videoconferencing for the FGS conference which will be held in Springfield, IL in early September.

Genealogists' Declaration of Rights

Over the last few years, access to public records has been threatened due to concerns about privacy and identity theft. In response, RPAC launched a Genealogists' Declaration of Rights. The Genealogists' Declaration of Rights is a statement advocating open access to federal, state and local public records. In 2014, RPAC's 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://www.iajgs.org/blog/legislation/declaration-of-rights/>. The electronic version of the Declaration is available at <http://bit.ly/gen-declaration>. As of the date of this report, there are approximately 10,750 signatures. At the 2016 NGS Conference in mid-May there was an IAJGS table, where we continued gathering signatures. There was also a table for signature gathering at the Genealogy Roadshow's tapings across the country and at the Southern California Genealogical Jamboree.

National Coalition for History

In 2014, RPAC was invited to join the National Coalition for History (NCH) <http://historycoalition.org/> and, beginning in 2015, RPAC Chair Jan Alpert started serving a two-year term on the NCH Policy Board.

The NCH is a consortium of over 50 organizations that advocates on federal legislative and regulatory issues. The coalition is made up of a diverse number of organizations representing historians,

archivists, researchers, teachers, students, documentary editors, preservationists, political scientists, museum professionals and other stakeholders. Since 1982, NCH (formerly the National Coordinating Committee for the Promotion of History) has served as the voice for the historical and archival professions in Washington, D.C.

NCH's priority issues may be read at: <http://historycoalition.org/priority-issues/>. Some of the priorities include: federal funding for the National Archives and Records Administration, the Institute of Museum and Library Services; the Smithsonian Institution, and the Library of Congress; legislation affecting public access to federal records and the digitization of federal records; and advocacy on federal agency and regulatory policies with the intent of maximizing access for historians and researchers to federal records and facilities, and expediting the processing of records for public use.

For the past three years, NCH has been promoting the creation of a Congressional History Caucus to provide a forum for members of Congress to share their interest in history and to promote an awareness of the subject on Capitol Hill. It is important for our community to be seen as a resource by Congress and we hope to build lasting relationships between Members of Congress and historians, archivists, teachers, students, **genealogists**, researchers, and other stakeholders in their respective districts. Genealogists were added to the write-up at the request of RPAC and from a suggestion by IAJGS President Marlis Humphrey. To read more on the Congressional History Caucus see: <http://historycoalition.org/congressional-history-caucus/>

During 2016, each of the three sponsoring organizations agreed to increase the RPAC membership to full membership in the National Coalition for History, beginning with the 2017 dues.

Each of the three RPAC sponsoring organizations shares equally in the annual dues payment to the National Coalition for History.

Joint Statement by Council of State Archivists (CoSA)

During 2016, a Joint Statement by the Council of State Archivists was brought to RPAC by Ed Grandi, Executive Director of the NGS. All three of the RPAC supporting organizations Boards of Directors' agreed to support the Joint Statement of Archivists.

From the RPAC Support of Joint Statement of Archivists:

As genealogists we support the "Joint Statement on Access to State and Local Records" which was approved in March 2016 by the Council of State Archivists, National Association of Government Archives and Records Administrators, and Society of American Archivists. Archivists are the custodians of many of the local, state, and federal records which are important to our research. We acknowledge that archivists are under considerable pressure to preserve and maintain access to a growing number of public records within the constraints of decreasing budgets.

RPAC agrees that "government archives play a critical role in ensuing citizens' rights and preserving the nation's history by identifying, preserving, and ensuring public access to records that document government actions."

Digital Due Process Coalition

In 2012, RPAC joined the Digital Due Process Coalition (DDPC) <http://www.digitaldueprocess.org>, a broadly-based coalition of commercial enterprises, including several non-profit organizations whose mission is government reform of internet privacy laws. However, starting in 2015, the IAJGS advised the other sponsoring members of RPAC that as the DDPC had yet to take any affirmative action for the genealogical community's concerns (such as with the Congressional action on the limited access to the Death Master File), IAJGS would no longer vote to have RPAC sign the DDPC sign-on letters. RPAC requires all three sponsoring agencies to agree to any actions. Therefore, it would be left to FGS and NGS if they wanted to sign for their respective organizations as IAJGS's decision to no longer vote to sign the DDPC "sign-on" letters would preclude RPAC from affixing their signature. The IAJGS decision was made with consultation between IAJGS President Humphrey and IAJGS RPAC sponsoring member Allen. This position has continued in 2016. Most recently another RPAC member has questioned the

viability of RPAC remaining as a member of the DDPC since over the past four years, they have yet to do anything to support our issues.

RPAC joined these Coalitions to gain allies in its quest to preserve and promote access to the records we need.

Records Advocate Blog

During 2016, RPAC started their own blog, *Records Advocate*. The purpose is to keep the reader advised of state, federal and international access issues throughout the year. It is not the same as the IAJGS *Records Access Alert*. The Records Advocate can be accessed at:

<http://www.recordsadvocate.org/>

RPAC Priorities for the Next Year

1. To continue to monitor and oppose the adoption of the 2011 Model Vital Records Act embargo periods for records and indices, whether introduced by legislation or regulation.

2. It is recognized that in an election year, it is highly unlikely to find a sponsor to amend the 2013 Bi-Partisan Budget Act Section 203. It is RPAC's intent to find a sponsor for 2018 to amend the Act to permit making the DMF available to genealogists without the Social Security Number and the minimum information available, and when we have proof that the IRS filters are working, repeal Section 203 of the Bi-Partisan Budget Act.

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 in the erroneous belief that these actions 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. Stronger and more secure safeguards by these institutions are needed to protect against identity theft. 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 and the 2014 threat in Oklahoma when they attempted to consolidate the Oklahoma Historical Society with the Department of Tourism. Indiana was the focus of this debate in 2015 when the governor proposed a 24 percent decrease in state library funding but, in the end, the loud outcry restored the Genealogy Division and statewide database funding was restored. In 2016, the issue appeared in Iowa with funding for a new building vs. access and staffing for the archives-and that issue is yet to be resolved.

Your Role in Preserving Access to Vital Records and Census Information

Achieving access to vital records and census information takes everyone's efforts. Please get involved by contacting your state or national representatives when there is an access issue that affects you. "All politics is local." While IAJGS may submit 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 three 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 four main issues to which PRAMC devoted many hours, as well as the usual monitoring and letter writing on specific issues.

European Union [EU] Adopted Data Privacy Regulation

As reported to you for the past two years, 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.”

[NOTE: Yes, BREXIT occurred before the writing of this report, however it will take 2 years once Article 50 of the Lisbon Treaty is ratified and therefore, for the purposes of this report, the UK is still part of the EU and we remain discussing 28 member countries. Article 50 of the Lisbon Treaty sets out how an EU Country might voluntarily leave the union. It specifies that the negotiators have up to two years from notification to the EU Council to conclude new arrangements.]

Remember there is a fundamental difference between the EU and the United States when it comes to privacy. In the EU, privacy takes precedence and in the US, the constitutional right of freedom of speech takes priority—this is the crux of the debate on the right to be erased or right to be forgotten.

In April 2016, both the European Union Council and Parliament approved the General Data Protection Regulation (GDPR). The new rules were four years in the making and went through numerous debates in Committee, and in the EU Council, Commission and Parliament. From its original introduction to what was approved, the GDPR had 3,999 amendments—topping all other pieces of legislation in the Parliament’s history. The new rules adopt the “right to be forgotten” as well as give data privacy regulators the authority to impose penalties amounting to up to 4 percent of annual turnover for global companies for noncompliance. The rules also state that individuals must give their “clear and affirmative consent” before companies, or governments, can process their private data.

Prior to the GDPR being implemented it had to be posted in the EU’s Official Journal and then after 20 days, each of the 28 member states (countries) have up to two years to modify their country legislation to be compliant with the EU regulation that requires all members to have the same rule. On 4 May 2016, the *Official Journal* posted the final rule. With the publication of the rule, the implementation date two years hence is 25 May 2018.

The GDPR governs the use and privacy of EU citizens’ data and the Directive governs EU citizens’ data by law enforcement. The EU represents 500 million residents in the 28 member countries. Currently there is a patchwork of national rules and this is one law for everyone.

The first data protection rules were adopted in 1995—when the Internet was in its infancy. Starting in 2012, the EU Commission published a legislative package aimed at replacing and updating the 1995 rules—and a directive aimed at data protection in the police and justice systems. Due to Edward Snowden’s whistleblowing on NSA activities in 2013, EU politicians reacted and stricter measures to ensure privacy were adopted in the approved regulation and directive. Currently, each of the 28-member countries has their own data privacy regulation. They are not uniform. Some state the provisions of the “right to be forgotten” only affect the living, while others state they affect both the living and deceased.

Of interest to genealogists (emphasis added): The protection of persons in relation to the processing of their personal data is a fundamental right laid down in the Charter of Fundamental Rights of the EU (Article 8) and in the Treaty on the Functioning of the European Union (Article 16). The adopted GDPR explicitly states that the regulation **does not apply to deceased individuals**. In addition, it states, “Public

authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, **have a legal** obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorized to provide for the further processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behavior under former totalitarian state regimes, genocide, crimes against humanity, in particular the **Holocaust, or war crimes.**"

For those of us who rely on searches to assist us in our genealogical research, the new GDPR has major impacts on us as it will have the effect of not being able to research links from certain countries or only parts of the Internet.

Facebook and Google Legal Issues

As I reported last year, a French Court decided against Facebook in that the French Court has jurisdiction against companies doing business online even if the company does not operate in the EU. The Court decision involved Facebook and its contract that states "any litigation must be based in California, where the site is based." At the hearing, Facebook's attorney stated that the French did not have jurisdiction as users have to sign a clause agreeing that only a California court can rule in disputes relating to the firm. The Court found this "abusive" and therefore null and void.

In another French Court decision against Google, a person sued them citing the "right to be forgotten" decision and asked that all links be removed in all of Google's worldwide search domains. The Court found for the plaintiff setting the precedent that the EU Court's ruling applies both inside and outside of the EU. Google was fined a daily penalty of \$1,100 USD. Since then, the French Data Protection Agency, CNIL, decreed that the French Court decision on delisting to be global needs to be followed. They then gave Google 15 days to comply or they would impose sanctions. Google replied with a different proposal.

In February 2016, Google stated they would start scrubbing search results across all of its websites when accessed from a European country to soothe objection of the EU privacy regulators. Google started filtering search results according to user's IP address, (geo-blocking technology), meaning people accessing Google from outside Europe will not be affected. In March, CNIL imposed a fine of €100,000 (~\$112,000) because Google did not meet the CNIL demand to delist the full domain name extensions from its search engine—in other words, because Google did not remove the link from all of its websites, including those located outside of Europe, including Google.com in the United States. The decision by the CNIL President said the different geographical extensions, i.e. .ca, .com, .es, .fr, .uk, etc. are not considered separate treatments but a service adapted to the national language of each country. Google appealed the CNIL decision in May 2016 with France's Supreme Administrative Court, the Conseil d'Etat.

To further confuse the issue, two different EU countries' High Courts have opposing decisions on whether the right to be forgotten supersedes the freedom of press. In France, the court said the freedom of press prevails, while Belgium's High Court found the right to be forgotten prevails.

Google's second year transparency report was released in May 2016. Google is the largest search engine in Europe with approximately 90 percent of the market- which varies by country. They received 445,722 requests to delink from 1,562,148 URLs of which they removed 57 percent of the URLs. Google refuses about 70-75 percent of requests for delinking. The top three EU countries where the right to be forgotten requests originate are Germany, the United Kingdom and France, comprising 66.2 percent of requests.

Data Transfer Agreement-Safe Harbor Declared Invalid-New Privacy Shield Agreement

Further litigation is happening in the EU against Facebook and Google as a result of the 15-year agreement known as the "Safe Harbor" being found invalid by the European Court of Justice (CJEU). The invalidation was a result of litigation brought by Ireland's High Court at the request of the Irish Data Privacy Regulator. Ireland is the EU country where many US companies have their European headquarters including Facebook and Google. Max Schrems, an Austrian law student, challenged

Facebook about the privacy of sending information on EU residents to its headquarters in the US. As a result of the CJEU decision on data transfer, in February of 2016, CNIL ordered Facebook to stop transferring user data to the United States. Additionally, CNIL gave Facebook three months to stop tracking (placing a cookie) web activity of browsers—on Facebook users— without their consent or face substantial fines for not complying with the order.

The US and EU have agreed to a new data transfer agreement known as “Privacy Shield.” However, the Article 29 Working Group, comprised of the various EU data protection regulators and headed by the French data regulator (CNIL), are not satisfied with the provisions in the new agreement; nor is Mr. Schrems. The issue is their concern over the US surveillance issues. The Privacy Shield includes strict rules for companies holding data on European citizens and clear limits on US surveillance. There are over 4,500 US based companies amounting to billions of dollars in trade between the two partners that are at stake, let alone the data that is being transferred. This includes companies that have genealogical, DNA and other data that genealogists would find of interest. The Privacy Shield agreement must be approved by the 28 members of the EU. That vote is expected later in July.

The issue of extraterritoriality—imposing one’s laws outside their jurisdiction—is a concern for all countries and should be monitored carefully. If extraterritoriality of EU rules are being imposed on countries outside of the EU, there are major implications for that country’s businesses and consumer rights.

The Global Stretch of the Right to be Forgotten

The right to be forgotten is a concept spreading across the globe. In addition to the EU, we have seen this being adopted in the following countries: Argentina, Australia, Brazil, China, Hong Kong, India, Japan, Mexico, Russia South Korea and Turkey. Israel’s Supreme Court refused to impose the right to be forgotten under their privacy law related to a specific issue to prevent indexing of court decisions by online search engines.

The issue is pending before the Canadian Supreme Court. Last year in the U.S., *Consumer Watchdog* requested the Federal Trade Commission impose the “right to be forgotten” concept. To date no action has been taken. In California, there is existing law since last year that enables minors to have embarrassing materials removed from their Internet pages. A recent ruling by the California State Appeal Court for the First Appellate District Court involves Yelp where an injunction against another person in a default judgement ordered Yelp to take down some “defamatory” comments by a poster on Yelp. The New Hampshire Supreme Court is weighing the state’s Right to Know Law giving the public access to government records vs. the privacy of a student in a high profile case brought by a documentary film maker to have the annulled files/sealed records opened. Under New Hampshire’s annulment statute, a court case is treated as if it never happened—erasing history—or in today’s vernacular—the “right to be forgotten.” The US Supreme Court refused to hear a case on the right to be forgotten, leaving a lower court’s decision of denying the right to be forgotten in place.

IAJGS continues to monitor these privacy and right to be forgotten issues within the European Union and elsewhere. The best place to monitor the updates is on IAJGS *Records Access Alert*. For more information on the above cited examples, go to the archives of the *Records Access Alert*.

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

IAJGS and RPAC continue to monitor and respond to the DMF issues that resulted from when the U.S. Congress enacted the Bi-Partisan Budget Act P.L. 113-67 in December 2013. After 17 months, the Department of Commerce recently released the final regulations on access to the limited DMF and certification requirements. Unfortunately, none of the suggested changes to the proposed regulations by the genealogical community were adopted. The final regulations are not genealogically friendly! Most genealogists—whether professional or hobbyists—are not able to meet the security standards required for offices let alone the high costs for certification and purchase price of the limited data.

The IAJGS objected to these provisions of the proposed rule:

1. Limited data elements in the Death Master File making it all but unusable for meaningful genealogical searches.

2. Prohibitive charges for access to the data and to becoming certified.
3. Security provisions that are not small business-friendly.

It is recognized that in an election year, there is no chance to find a Congressperson or Senator who would introduce legislation that would amend Section 203 permitting all the data elements, except for the Social Security number be made available without waiting for the three years embargo. In addition, the limited number of data elements makes information all but useless for genealogists and, therefore, the best outcome would be to have Section 203 repealed.

It should be noted that The Mitchell Hamline Law Review recognized the value of the DMF to genealogists and the concerns of the IAJGS. The review quotes from Jan Meisels Allen's 2013 article in *Avotaynu*, 15 Oct 2014 *IAJGS Records Access Alert* as well as some of PRAMC's handouts. [42 Mitchell Hamline L. Rev. 791 (9 May 2016)]

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. The working group has been disbanded, so our recourse is to work on the legislation as it is introduced in various states.

RPAC contacted NAPHSIS to ask to work with them to reduce the embargo years for the records and permit cause of death in the death records to help trace genetically-inherited diseases. NAPHSIS's response was less than inviting, saying they would meet if the RPAC chairperson was in the neighborhood although they could not see any reason to meet.

Maine—IAJGS has been working with the Maine Genealogical Society and has been privileged to be considered by the Maine Department of Health Services Office of Vital Records as a Stakeholder during the 6 years of working first on the legislation and the 4 years on the proposed regulations. The most recent iteration of the proposed regulations was shared with the stakeholders last fall and IAJGS submitted its comments on 22 October 2015. We continue to make the same points- so there is a paper trail, although over the years the staff has not adopted our comments.

Our comments included:

- Opposing treating indices the same as the vital records regarding embargo dates—something not included in the Maine Statutes and a characteristic of the 2011 Model Vital Records Act.
- The statute states "shall" and the draft regulations use "may," so we have requested the word "shall" replace the word "may" throughout the regulations.
- Confidentiality agreement prohibits sharing of the information from the vital records with others. We suggested a separate researcher form for genealogists from scientific researchers as genealogists need to share the information with their clients and families.
- Definition of public records should include vital records, not exclude them.
- Opposition to the "no hands rule" as original copies are better than abstracts which may miss vital information contained in the original record. Requested the original record be made available for "hands on inspection."
- Opposition to not being able to reproduce health or medical information on vital records as this information is critical for extended family health history to help the living by taking preventative or early treatment if necessary.

They also proposed a genealogical research card Disclosure Agreement. On 24 March 2016, IAJGS submitted our comments to the Maine staff. Our stated concerns included:

- The two provisions stating a genealogist may not learn the identity of any individual and no disclosure of the identity of a person “inadvertently” discovered be removed from the Genealogist’s Code of Ethics Disclosure Agreement, or state that it is not pertinent to genealogists.
- The proposed cost for the Researcher Card had previously been agreed to between the stakeholders and former state staff for two years and \$25. The current version has no mention of the cost and time but included in the October 2015 draft regulations which mentioned one year at \$50. We asked that the reduced fee and longer time frame would be reinstated.

On 25 March 2016, we were advised by state staff that they were told by the General Counsel’s Office that the Department will take a new approach to the drafted rule and everything is again on hold. No public hearing date has been set. No further communication has been received. It has now been four years that we have been waiting for the regulations. Stakeholders were advised no further communication was permitted between the staff and stakeholders.

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 his own death record*). An attempt was made to modify the statute in 2014. In 2015, an amendment was adopted which permits anyone after 75 years to access ala Model Vital Records Act. On 6 June 2016, Governor Mary Fallin signed HB 2703 into law. The new law permits certain categories of people to access the records immediately, such as the named person, parents, legal counsel, and law enforcement individuals. In addition, public access to death records was reduced from 75 years to 50 years. These provisions become effective 1 November 2016. Effective 1 July 2017, the Oklahoma Department of Health is required to have an online public index including dates of birth and death, and counties of birth and death. Birth data is added 20 years after date of birth and 5 years after date of death. Access to the online index is available at no cost to users.

United States Citizenship and Immigration Service (USCIS) Proposed Increase in Genealogical Fees

The USCIS proposed an increase in all fees including for their genealogical services. The proposed rule was lacking clarity in several places, but attempts by phone and email to the CFO went unanswered. The proposed rule stated the only person to contact about questions on the new prices proposals was the CFO. IAJGS submitted a statement on 20 June 2016. While we recognized the original fees were established without back-up information on the full cost of operating the genealogy research and information services the proposed increases were exceeding high: 291 percent increase for ordering both a search and record and for the record alone a 217 percent increase. We suggested the fees be phased-in over several years and that the records be transferred to the National Archives as soon as possible so that they are freely accessible to the public.

Kansas Supreme Court Rules 106 and 108

As reported last year, the Kansas Supreme Court considered changes to two rules: 106 and 108 which restrict access to marriage records. On 7 August 2015, IAJGS submitted comments on the proposed changes. Our concerns were about redaction of information in “limited” marriage records and the destruction of the confidential cover sheet after one year. The Court adopted the rules without change.

Selected Achievements, New Access to Records, Activities, Monitoring and Reporting Issues [To read all major activities go to *the Records Access Alerts Archives*]

Canada

The first bill signed into law by newly elected Prime Minister Trudeau was the reinstatement of the long-form census which was employed in the 2016 5-year census.

Germany

Nazi photographs archives found, including photographs of prisoners in Dachau.

France

Opened police and legal archives from World War II Vichy regime that were previously classified.

United Kingdom

WWI Red Cross Volunteers Records Digitized; Parliament discussion on whether to add mothers' names to marriage certificates.

United States

California

Attorney General's report on data breaches and identity theft.

Delaware

New restrictions on release of cause of death information.

New York City

The New York City Department of Health required The New York Public Library to remove the post-1909 NYC birth indexes and the post-1948 death indexes from the library. No specific reason was given for the removal.

Reclaim the Records—New York and New Jersey

New Jersey Indexes for 20th Century Vital Records went-on-line; Reclaim the Records received the New York City Marriage Index Microfilms and went online for free public use; Reclaim the Records filed petition against the New York City Clerk's Office for Marriage Indices 1938-2015.

West Virginia

Blocked death records with Social Security numbers less than 50 years old from being viewed on the website of the Division of Culture and History

All IAJGS comments and recommendations concerning legislation and rule-making support the position that there should be public access and, if some restrictions are necessary, then these restrictions must not be infinite. Birth, marriage, divorce, and death records should be open to the public and available for research. We are trying to open public access, within a specified time period, to records that currently may have extreme embargo dates or permanent closure.

Code of Ethics

The PRAMC submitted a request to the IAJGS Board of Directors to amend the IAJGS Code of Ethics where it contains a 75-year suggested embargo date to a statement with no embargo mentioned. We also suggested rewording another component that could be inferred to endorse the "right to be forgotten." The IAJGS Board of Directors has taken the request under advisement.



Jan Meisels Allen

Chairperson, IAJGS Public Records Access Monitoring Committee