



To: IAJGS Members- 2017 Annual Session

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

Re: Public Records Access Monitoring Committee-Annual Report

Date: 20 June 2017

### **Committee Members 2016-2017:**

Jan Meisels Allen, Chairperson, Agoura Hills, California

Teven Laxer, Sacramento, California

Mark Nicholls, Edgware, Middlesex, London, UK

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. Access to vital records, census documents and other records is essential to the ability of genealogists to research family histories—whether as a business or a personal 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.

IAJGS requires that each year every Committee needs to be appointed anew. Four members will be retiring their term on the PRAMC at the time of the annual meeting: David Ockene, Ken Ryesky, Joel Spector and Amy Wachs. We very much appreciate their dedication to the IAJGS and PRAMC over the years and know we can count on them for individual requests for assistance in the future.

A posting on the IAJGS Leadership Forum asking for anyone who would like to be considered to join the PRAMC that has an interest in **and** experience in legislative advocacy, lobbying or reviewing legal or legislative proposals has not resulted in any new volunteers. We will be contacting individuals whom we think may have the credentials for consideration.

### **Code of Conduct/Ethics**

Last year the PRAMC proposed to the IAJGS Board of Directors, who agreed, to amend the privacy and embargo provisions in the Code of Conduct/Ethics. This year, the PRAMC proposed to update the remaining provisions of the Code of Conduct/Ethics and submitted them to the IAJGS Board of Directors for its consideration. At the June 13 IAJGS Board meeting the new Code of Conduct/Ethics was unanimously adopted.

### **JewishGen**

Based on the JewishGen Operations Committee new rules, set two years ago, the PRAMC is 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 monthly one-line summary of postings on the IAJGS *Records Access Alert* the beginning of the month following. For example, the JewishGen posting

in the first week of June 2017 covered the IAJGS *Records Access Alert* postings for all of May 2017. 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 13 out of 76 IAJGS members that do not have any members subscribed. This is the second year that the IAJGS *Records Access Alert* opened up subscriptions 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 691 subscribers.

We hit an all-time high of 702 subscribers earlier in May. However, whenever there are postings about the European Union and/ or the right to be forgotten (RTBF) we lose a few subscribers who might be questioning the relevancy of such postings. As IAJGS is an international organization, PRAMC believes it is critical that the IAJGS Records Access Alert covers the entire globe, not just North America. In addition, as reported below, the right to be forgotten has started to raise its specter in Canada and the United States. Every genealogist should be aware and concerned about the right to be forgotten as a way to erase our history.

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:**

- 198 *Records Access Alert* postings on 29 countries since the 2016 IAJGS Annual Meeting
- 691 subscribers to IAJGS *Records Access Alert*- more than doubled from 2015.
- Subscribing to the Records Access Alert was promoted by IAJGS at RootsTech and NGS and will be promoted at the FGS conference during the RPAC presentations..
- 2017 Who Do You Think You Are? Live April 2017 JGS Great Britain stand/booth.
- The *IAJGS Records Access Alert* is also promoted at the IAJGS conference booth with fliers at the IAJGS table and at the annual meeting.

#### **Presentation/Panels:**

- Three conference panel presentations: FGS2017 (August), NGS 2017 (May); and IAJGS-PRAMC Program at 2017 IAJGS Conference with Jan Meisels Allen and Dick Eastman.

#### **Submitted Statements and Monitoring Issues:**

- IAJGS submitted a statement on proposed changes to Vermont Vital Records Statutes and was successful in getting the bill amended to reinstate vital records indexes by the State Registrar enabling the public to search contents of the vital records system by the name of the registrant and by the date of the vital event. The bill was signed into law and becomes effective July 1, 2018.
- IAJGS PRAMC participated throughout the year as a stakeholder on the Maine State Department of Health, Office of Vital Records committee. After six years we are still waiting for the final regulations to have a public hearing.
- Reported on numerous international issues including: Argentina, Australia, Belgium, Brazil, Canada, Denmark, Czech Republic, European Union, France, Germany, Hungary, India, Indonesia, Ireland, Israel, Japan, Netherlands, New Zealand, Norway, Peru, Poland, Russia, Scotland, South Africa, South Korea, Turkey, West Indies, UK and United States legislation and regulations.

#### **Genealogists' Declaration of Rights and RPAC:**

- Collection of signatures on the Genealogists' Declaration of Rights—current total **10,909**.
- The National Association of Public Health Statistics and Information Systems (NAPHSIS) created

a Fact of Death database which is being developed for commercial purposes. RPAC has asked NAPHSIS to provide genealogists with access to the database.

### ***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 691 subscribers, but thirteen IAJGS member organizations have not yet subscribed. Since last year's annual meeting, the *Records Access Alert* has had 198 postings on records access covering 29 countries. Non-public access items are posted to the IAJGS Leadership Forum.

### **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 from 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. Amy Wachs has been the second IAJGS RPAC representative since 2015 and will leave the RPAC position when she leaves PRAMC this July.

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 and 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 Raleigh, NC, and will participate on a similar panel presentation at the FGS conference which will be held in Pittsburgh, PA, in early September.

Other RPAC activities since last year's report:

- In January 2017 RPAC held a legislation and regulation webinar to assist state liaisons. Jan Meisels Allen, IAJGS representative to RPAC created, and conducted the webinar, which is posted to the RPAC website: <http://www.fgs.org/rpac/publications/>
- Since 2013, RPAC has been in dialog with NAPHSIS about access to Vital Records in the fifty-seven states and reporting jurisdictions. Efforts to amend the Proposed Model Vital Statistics Act have not been successful. RPAC's recourse is to continue to advocate for more accessible records state by state.
- Requesting NAPHSIS to open death records to prevent identity theft of a deceased person by publicizing the death in the Death Master File.
- Requesting the embargo period of death records be reduced.

### **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 **10,909** , signatures.

### **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. Her term ended January 2017.

The NCH is a consortium of over 50 organizations that advocate 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 four 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/>

Effective in 2017, each of the three sponsoring organizations agreed to increase the RPAC membership to full membership in the National Coalition for History.

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

The National Coalition for History is currently actively lobbying for adequate funding for the National Archives (NHPRC) National Historical Publications and Records Commission which provides grants to states for archival preservation, and for the Library of Congress and the National Endowment of the Arts which the proposed Administration budget would drastically reduce. If the National Archives budget is cut it will likely impact regional archive hours as well as those in DC and Maryland. RPAC is encouraging its members to write their legislators about the budget reductions for NARA and NHPRC.

### **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 2017. Another RPAC sponsoring member has questioned the viability of RPAC remaining as a member of the DDPC since over the past five 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.

#### **RPAC Priorities for the Next Year**

RPAC developed priorities for 2017 which include:

- Opposing NAHPSIS Model Act increased embargo years;
- Collection of Genealogists' Declaration of Rights signatures;
- Access to NAPHIS EVVE Fact of Death System;
- Monitoring right to be forgotten legislation; and
- Updating the vital records access database.

#### **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.

*The Gemalto Report* on data breach levels is a worldwide report. Its 2016 report Breach Level Index revealing that 1,792 publically disclosed data breaches led to almost 1.4 billion data records being compromised. This was an increase of 86 percent compared to 2015. Identity theft was the largest category of data breaches, accounting for 59 percent of all data breaches. However, in a word search, the terms, "genealogy," "genealogical," nor "family history" were not found, making the obvious assumption that the study did not find these 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, several 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. Since

then we have seen it in Canada with the Library and Archives Canada, and the 2014 threat in Oklahoma when an attempt 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. 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. In 2017, the Library of Virginia was threatened but genealogists were successful in getting most of the funding restored. At the time of this report being written, *Bibliothèque et Archives nationales du Québec* (Canada) is facing budget cuts of \$855,600 that might reduce staff by 40 people as well as the hours of operation in all branches.

### **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 three years, the EU General Data Privacy Regulation (GDPR) is of concern to genealogists. It becomes effective May 25, 2018, and many EU countries are adopting country-specific legislation to comply with the GDPR. The regulation includes the "right to be forgotten," as well as "the right of erasure."

[NOTE: Yes, BREXIT occurred before the writing of this report, and Prime Minister May has invoked Article 50 of the Lisbon Treaty, which will take two years until it is completed. Negotiations are underway between the EU and the UK regarding the UK leaving the EU, however, it is expected that the UK will follow many of the privacy issues in the GDPR. As it will take two years to complete the UK's leaving the EU, 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 finally 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.

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.

**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 our not being able to research links from certain countries or only parts of the Internet.

#### **Facebook, Google, Microsoft and other Social Media Companies' Legal Issues**

As I reported previously, a French Court decided against Facebook, determining 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 Facebook's 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. Since then, the French Data Protection Agency, CNIL, decreed that the French Court decision that delisting to be global needs to be followed. Google was given 15 days to comply or sanctions would be imposed. Google replied with a different proposal, which was not accepted by the CNIL and the case is now before France's highest administrative court, the *Conseil d'Etat*. A number of newspaper and journalist organizations and other freedom of speech advocates have filed letters on behalf of Google.

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.

However, the issue of extraterritoriality is not only being faced in France but also in Austria and Canada. A Viennese (Austria) Court ruled Facebook must remove postings that are deemed to be "hate speech" by Austria's Green Party across Facebook's entire global platform, not just in Austria.

In December 2016, the Canadian Supreme Court heard a case brought by Google on the right to be forgotten (RTBF) when the British Columbia Supreme Court placed a worldwide injunction on a company regarding a former engineer's theft of product design. While Google removed 345 links from Canadian search results the plaintiff sued for a worldwide injunction. We are still awaiting the Canadian Supreme Court decision. While we are awaiting the ruling by the Canadian Supreme Court on the extraterritoriality of the right to be forgotten, the Canadian Federal Court made landmark ruling in February on a case that would allow courts to issue orders with the removal of Google search result on a global basis.

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 the EU rules are being imposed on countries outside of the EU, there are major implications for that country's businesses and consumer rights

Google's third year transparency report was released in February 2017. Google is the largest search engine in Europe with approximately 90 percent of the market- which varies by country. They received 689,697 requests to delink from 1,908,442 urls of which they removed 43.2 percent of the URLs.. The top three EU countries where the right to be forgotten requests originate are France, Germany and Great Britain.

Microsoft's biannual transparency report for July-December 2016 was released in April 2017. Microsoft's Bing search engine receives over 4,400 requests from EU countries and Russia representing 15,000 urls. Microsoft accepted 31 percent of the urls to be delinked.

### **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 was approved by the 28 members of the EU.

When President Trump signed an Executive Order in January, [\*Enhancing Public Safety in the Interior of the United States\*](#), it excluded persons who are not U.S. citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information. At first this raised alarms as to whether the president's action would undermine the EU-U.S. Privacy Shield. However, these concerns were dismissed by European Commission stating the Privacy Act and the Privacy Shield do not overlap.

### **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, 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. Japan's Supreme Court found on all four cases that were appealed by Google due to lower courts' conflicting decisions. While the Japanese Supreme Court rule was not pure "right to be forgotten," it provided the Court's views on standards that should apply when people want search engines to redact/remove links to past wrong doings.

In October 2016, France adopted the French Digital Republic Bill which included the right to be

forgotten for persons who were minors at the time their personal data was collected.

The issue is pending before the Canadian Supreme Court.

In New York State, there were two bills introduced that would impose the right to be forgotten. The Senate version was withdrawn by the author, recognizing it was a violation of the first amendment rights of freedom of the press and speech. However, the Assembly version is still in its initial committee, with no hearing set as yet. Recently, *Consumer Watchdog* endorsed the Assembly bill.

In 2015, Consumer Watchdog submitted a request to the Federal Trade Commission to impose the right to be forgotten in the United States. Thus far no action by the FTC has been taken.

In California, there is a court case before the California Supreme Court involving a posting on Yelp where one reader “defamed” an attorney. The attorney is seeking to enforce the take down of the comments on Yelp—but is requiring Yelp to do the removal—not the comment poster. Yelp is a non-party to the original litigation, and therefore, does not believe they are responsible for removing the comments—rather they assert that is the responsibility of the poster. In the US, there is the Federal Communications Decency Act Section 230 which provides for online free speech. Also in California, there is existing law that enables minors to have embarrassing materials removed from their Internet pages.

The New Hampshire Supreme Court weighed in on 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 Supreme Court found that the records of the arresting and prosecuting agencies “remain subject to disclosure under the [New Hampshire] Right to Know Law.” However, as the lower Court bifurcated the issues, the Supreme Court remanded the decision on Attorney work product and whether it is subject to the Right to Know Law.

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: 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.

**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 permitted 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 death records ala Model Vital Records Act. On June 6, 2016, Governor 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 became effective November 1, 2016. On January 9, 2017, six months ahead of schedule, the Oklahoma Department of Health premiered the new website: <https://ok2explore.health.ok.gov/>. This is a free searchable index of births and deaths for records 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. The state regulators worked together with the Oklahoma Genealogical Society to achieve these vital records indexes online. The actual records still have the embargo dates of 125 years for birth and 50 years for death with exceptions as to who may access them prior to the embargo time period is completed.

**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 six years of working first on the legislation and the five-plus years on the proposed regulations. The most recent iteration of the proposed regulations was shared with the Stakeholders during Fall2015 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.

They also proposed a genealogical research card Disclosure Agreement. On 24 March 2016, IAJGS submitted our comments to the Maine staff. Nothing further has been released.

To date no public hearing date has been set. No further communication has been received. It has now been more than five years that we have been waiting for the regulations. Stakeholders were advised no further communication was permitted between the staff and stakeholders.

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

#### **Australia**

Red Cross Australia Donates Its Historical Collection to U of Melbourne WW II Cards Now Digitized

#### **Brazil**

Superior Court of Justice Unanimously Decides RTBF Cannot Be Imposed on Search Engines

#### **Canada**

- Library and Archives Canada and Supreme Court of Canada Sign Agreement on Transfer, Preservation and Access to Case Files
- Library and Archives Canada Launch First World War Personnel Records Database
- 2016 Canadian census 98.4 percent of the census population filling out their long- and short-form questionnaires!

#### **Czech Republic**

Constitutional Court Retains Archives Access to Nazi and Communist Era Documents

#### **Ireland**

General Record Office of Ireland Makes Civil Registers of Vital Records Available for Free

#### **ITS**

The International Tracing Service Places their General Inventory Online

#### **Germany**

Hamburg Commissioner for Data Protection Orders WhatsApp From Sharing Data With Parent Facebook

#### **Netherlands**

Amsterdam Archives Free to View and Download 18 million Scans

#### **Poland**

Poland Places Names of Auschwitz Database of Prison Guards Online

#### **United Kingdom**

National Archives Alien Registration Cards and Naturalization Case Papers Online in Their Discovery Catalogue

## **United States**

### **California**

California Supreme Court Rules Public Officials Emails, Texts, Voicemails are Public Records When Government Related Made on Private Cell Phones and Computers

### **New York State**

New Law Amends Mental Hygiene Regarding Release of Information 50 Years After Death

### **New York City**

- FamilySearch Releases 1890 New York City Police Census
- New York Public Library Digitizes City Directories 1786 through 1922/3

### **Reclaim the Records (RCR) —Missouri, New York and New Jersey**

- New York State Death index 1880-1956 obtained and being uploaded to Internet Archives.
- RCR wins agreement with NYC Clerk's Office for Marriage Records Index to be placed online.
- RCR Sues Missouri Department of Health and Senior Services for Birth and Death Indexes

### **Vermont**

Successful IAJGS lobbying amends vital records legislation to permit vital records indexes development by State Archivist and to be available to public.

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.



Jan Meisels Allen

Chairperson, IAJGS Public Records Access Monitoring Committee