



To: IAJGS Members-2018 Annual Session

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

Re: Public Records Access Monitoring Committee-Annual Report

Date: June 1, 2018

Committee Members 2017-2018

Jan Meisels Allen, Chairperson, Agoura Hills, California

Bert Lazerow, San Diego, California

Teven Laxer, Sacramento, California

Mark Nicholls, Edgeware, Middlesex, London, UK

Paul Silverstone, New York, New York

Catherine Youngren, Coquitlam, British Columbia, Canada

Ken Bravo, *ex officio*, President IAJGS, Cleveland, Ohio

The Public Records Access Monitoring Committee (PRAMC) had a busy year monitoring and addressing issues affecting access to public records.

The IAJGS PRAMC added a new committee member this year: Herbert "Bert" Lazerow who is a Professor of Law, University of San Diego and a member of the San Diego JGS. We are delighted to have Bert join us on the committee. He brings knowledge and expertise that greatly enhances the overall work of the committee.

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.

JewishGen

PRAMC is no longer permitted to post notices about pending matters on JewishGen as per the JewishGen Operations Committee rules, set three years ago, 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 following month. For example, the JewishGen posting in the first week of June 2018 covered the IAJGS Records Access Alert postings for all of May 2018. It is of the utmost importance that at least one member of each society subscribe to the *Records Access Alert* in order for societies to keep apprised of critical actions affecting records access.

We hit an all-time high of 736 subscribers earlier in May. However, whenever there are postings about the European Union's General Data Protection Regulation (GDPR) and/or the right to be forgotten (RTBF) we lose a few subscribers who might be questioning the relevancy of our 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. 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 by which our history can be erased.

The GDPR became effective on May 25, 2018 (see below). Now, the issue of privacy has become even more relevant. The PRAMC continues to review access to vital records and census records that result from government action worldwide and carefully 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 dated June 20, 2017:

Records Access Alert:

- 219 *Records Access Alert* postings on 26 countries since the 2017 IAJGS Annual Meeting in July 26, 2017 and 250 Alerts since the 2017 Annual Report (June 20, 2017) on 28 countries.
- 732 subscribers to IAJGS Records Access Alert- more than doubled from 2015.
- Subscribing to the Records Access Alert was promoted by IAJGS at RootsTech, NGS and will be promoted at the FGS conference during the RPAC presentations. Also promoted at Southern California Genealogical Jamboree at JGSCV exhibit table. Other RPAC members promote Records Access Alert at their speaking engagements.
- 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: FGS 2018 (August); NGS 2018 (May); IAJGS-PRAMC program at 2018 IAJGS Conference with Jan Meisels Allen.

Submitted Statements :

IAJGS submitted four statements on proposed regulations and one letter to Congress on the 2020 US Census:

Regulation statements:

1. New York City: Amendment to Provisions of Article 207 of New York City Health Code Regarding Proposed Transfer Schedule of Birth and Death Records to DORIS (October 2017). This regulation establishes embargo dates of 125 years for birth and 75 years for death records that are to be transferred from the Department of Health and Mental Hygiene to the Department of Records Information Services (Municipal Archives).

2. New York City: Proposed Amendment to General Vital Statistics Provisions (Article 207 of the NYC Health Code) (April 2018). Due to over 5,000 comments received on the above- mentioned regulation establishing extended embargo periods, this regulation would permit additional family members to gain immediate access to birth and death records. However, several categories of relatives and researchers including genealogists were omitted from this proposal. PRAMC expressed concern over this omission.

3. Canada: *Reputation and Privacy* Draft Policy Position. Submitted over IAJGS PRAMC member Catherine Youngren's signature and Canadian address. This proposal on privacy would establish a right similar to the European Union's right to be forgotten but with a different procedure. It asks Parliament to establish right to be forgotten by legislatively requiring delinking from search engines.

4. Maine: Disclosure of Vital Statistics Data, Reports, and Vital Statistics 10-146 Code of Maine Rules Chapter 4. After 8 years since the adoption of the access to vital records act, and 7 years working with the Department on the Stakeholders Committee, the Department of Health and Human Services proposed rules on access to vital records which in our opinion violate several state statutes providing for public access.

Letter to US Congress on US 2020 Census:

- IAJGS sent a letter to House and Senate leadership regarding the FY 2018 budget for the US Census and the concern of absence of sufficient funding to plan for an accurate 2020 census. Adequate funding is required to design and test new technologies, to improve data collection techniques, and to appropriately train enumerators.
- Since our letter in October 2017, the Secretary of Commerce within which Department the Census Bureau resides, acceded to a request from the Department of Justice that a new question on citizenship be added to the 2020 census. This was added based on the Justice Department's assumption it will "help enforce" the Voting Rights Act. As a result of this late addition a number of states have initiated a law suit against this provision. Additionally, a bill has been introduced by Democrats in the US Senate—S2580—requiring a tabulation of the total number of persons in each State, prohibiting eliciting any information regarding United States citizenship or immigration status to be included in the census.

Joined NY-RPAC (<https://nyrpac.org/>)

As a result of the New York City Department of Health and Mental Hygiene regulations limiting access by both years and relationship the New York Genealogical and Biographical Society created a committee of interested parties to address these issues and to try to achieve a unified voice in opposing the regulations. IAJGS joined NY-RPAC along with the JGS Long Island, JGS, Inc. (NYC), Guild of One-Name Studies, Irish Family History Forum, Italian Genealogical Group, NY Genealogical and Biographical Society, Records Preservation and Access Committee (IAJGS is a sponsoring member along with FGS and NGS) and Reclaim the Records. The steps that follow will be political, leaving litigation as the final procedure if necessary.

Monitoring Issues:

Reported on numerous international issues from countries including: Australia, Belgium, Canada, Chile, China, European Union, England, France, Germany, Gibraltar, Hong Kong, India, Ireland, Israel, Korea, Netherlands, New Zealand, Pakistan, Philippines, Russia, Scotland, Singapore, Spain, Sweden, Ukraine, UK and United States legislation and regulations.

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 must 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 734 subscribers, but fourteen IAJGS member organizations have not yet subscribed. 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 of the Genealogists' Declaration of Rights 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. In Summer 2017, Teven Laxer was appointed as the second IAJGS RPAC representative.

Beginning 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 has participated on the RPAC Records Access Panel presentation at the NGS annual conference in Grand Rapids, MI, and will participate on a similar panel presentation at the FGS conference which will be held in Ft. Wayne, IN in late August.

Other RPAC activities since last year's report:

- Since 2013, RPAC has been in dialog with National Association for Public Health Statistics and Information Systems (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 10,970 signatures.

National Coalition for History

In 2014, RPAC was invited to join the National Coalition for History (NCH) <http://historycoalition.org/> and, 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 several diverse 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.

Effective in 2017, each of the three sponsoring organizations agreed to increase the RPAC membership to full membership in the National Coalition for History. Their major efforts this year have been lobbying efforts on funding of the Library of Congress, National Archives and Records Administration (NARA), and the National Historical Publications and Records Commission (NHPRC). See: <http://historycoalition.org/advocacy/>

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 then- IAJGS President Humphrey and IAJGS RPAC sponsoring member Allen. This position has continued in 2018. 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. In 2018, RPAC has not yet been asked to provide signatures to their sign-on letters, however, that may happen as the House has passed the bill that DDPC was fighting for- requiring warrants for the companies to accede for government law enforcement requests, but has stalled in the Senate. IAJGS position of not signing-on the DDPC letters continues.

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 which include:

- Opposing NAHPSIS Model Act' increased embargo years;
- Continued collection of Genealogists ' Declaration of Rights signatures;
- Access to NAPHSIS 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 2017 report, Breach Level Index revealing that 1,792 publically disclosed data breaches led to almost 1.4 billion data records being compromised. The 2018 *Javelin Report* noted in 2017, there were 16.7 million victims of identity fraud, an 8 percent increase, a record high that followed a previous record the year before. The New York State Attorney General's Office reported in *Information Exposed, 20-17 Data Breaches in New York State* 1,583 breaches to the AG's Office.

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 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 was made 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. 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, the National Archives of Australia are experiencing a reduction in staff over the next two years due to budget reductions. The target is to get to 320 staff when in the 2013-2014 budget they had 429. Currently they are at 355 staff.

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 are 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, in addition to the usual monitoring and letter writing on specific issues:

European Union [EU] General Data Protection Regulation (GDPR)

For the past year, PRAMC spent by far the largest number of hours and number of Records Access Alert postings on the European Union's General Data Protection Regulation. While enacted in May 2016, it became effective May 28, 2018. In addition to personal data security the regulation codifies the "right to be forgotten," as well as "the right of erasure."

It must be remembered 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.

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. Prior to the GDPR becoming effective there was a patchwork of national rules and now there is one law for everyone. (While invoking Article 50 of the Treaty of Lisbon to leave the European Union, the United Kingdom does not leave the EU until March 29, 2019. The UK Parliament is currently looking at enacting their own and similar privacy legislation for when they leave the European Union.)

One of the regulation's provisions is the prohibition of the publication of personal data of living persons, especially when it is considered "special" personal data, such as religion, or political beliefs. There have already been closures of databases as a result of the GDPR: In the Netherlands, the archives removed from their online website: family cards from 1920-1940 which contain data on the religious disposition of the residents. DNA databases Y-Search and Mitosearch and World Famous Network all announced closure due to the GDPR.

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 from only parts of the Internet.

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

There are multiple lawsuits against multinational corporations and other social media companies that have been filed in the European Union.

- Within minutes of the GDPR becoming effective on May 25, 2018, Max Schrems, an Austrian lawyer, and his NGO, None of Your Business (NoYB), filed complaints with data regulators in four EU countries: Facebook was filed with Austrian data regulators, Google with French regulators, WhatsApp with German regulators and Instagram with Belgian regulators. NoYB contends that Facebook has trackers on websites that are visited, and therefore, even if a user's sensitive traits are removed from their profiles, Facebook can still get the information by analyzing the behaviors such as which websites are visited. The suit against Google alleges the Android software users are forced to provide personal data to use an Android-powered mobile device.
- Max Schrems also brought a case to the Irish High Court regarding the current data transfer agreement, Privacy Shield, between the EU and the United States. In this case he asserts that Facebook and other US companies practice indiscriminate processing of data and do not meet the privacy standards of the European Union. In April 2018, the Irish High Court referred 11 fundamental questions to the Court of Justice of the EU (CJEU). A previous case brought by Mr. Schrems resulted in the CJEU invalidating a 15-year data transfer agreement between the EU and the US, known as "Safe Harbor". The decision affected over 2,000 businesses which operated under the data agreement.
- A High Court in England found against Google in a "right to be forgotten" case. Google now is required to remove links to the person's conviction which was more than 10 years ago of conspiracy to intercept communications. There has been no notice in the press if this is being appealed.

The issue of extraterritoriality—imposing one's laws outside their jurisdiction—is a concern for all countries and should be monitored carefully. The question is whether EU law can regulate the activities of a non-EU company outside the boundaries of the EU as a condition of doing business in the EU or with EU citizens.

- A French Court decision against Google, where a person sued the search engine 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 went before France's highest administrative court, the *Conseil d'Etat*. That court has referred the case to the EU's Court of Justice, the EU's Supreme Court, asking if their May 2014 ruling establishing the "right to be forgiven" was intended to be extraterritorial. A number of newspaper and journalist organizations and other freedom of speech advocates have filed letters on behalf of Google. It is questionable whether a Court in the EU can make a ruling that requires countries not within the EU comply. A determination by the EU's Court of Justice is expected in 2018.
- The issue of extraterritoriality is one not only of interest within the European Union. In July 2017, the Canadian Supreme Court ruled in a case against Google, *Google Inc. v. Equustek Solutions Inc.*, that their ruling about taking down an URL was to be complied with worldwide, not only in Canada. Google took the company who "won" in Canada to court in the Federal District Court of San Francisco where the company did not appear. The US Court found *Section 230 Communications Decency Act*, which immunizes providers of interactive computer services against liability for content created by third parties, prevailed and therefore, Google did not need to comply with the Canadian Supreme Court decision.

Other Litigation:

- Berlin Germany regional court found that Facebook's use of personal data is illegal because Facebook did not adequately secure the informed consent of the users. The court also ruled eight clauses in Facebook's terms of service to be invalid, including terms that allow Facebook to transmit data to the US and use personal data for commercial purposes.
- CJEU finds that Max Schrems may sue Facebook in Austria his home country, not Ireland, where the Facebook European headquarters are located. The issue was whether Schrems could sue as a consumer or a class action suit Schrems lost. The Court decided he could sue as an individual consumer and not on behalf of a class which would have carried greater damages.

To view other litigation in the EU and other countries read the IAJGS Records Access Alert.

Google's fourth year transparency report was released February 2018. Google is the largest search engine in Europe with approximately 90 percent of the market, varying by country. The results show 43 percent of the requested URLs have been delisted out of 2.4 million URLs requested be delisted from 654,800 requests received between May 29, 2014 and February 27, 2018.

Microsoft's biannual transparency report for July-December 2017 was released in April 2018. Bing, Microsoft's search engine, reported there were 2,454 requests received covering 7,622 URLs with the request for content removal with France, Germany and the United Kingdom had the most requests. They accepted 3,787 URLs for removal. The percentage of requests to have URLs removed was collectively 50 percent. Since the "right to be forgotten" began in May 2014 until the end of December 2017, Microsoft received 23,949 requests for removal from 69,649, 40 percent of the request were accepted- 60 percent were rejected.

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.

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.

There is a proposed ballot initiative, *California Consumer Right to Privacy Act (CPRA)* of 2018 that could be on the November 2018 ballot if the 625,000 signatures submitted to the Secretary of State in May are validated. Provisions of the proposed initiative include permitting consumers to sue businesses for security breaches of consumer's personal information. This proposition would apply to every company that uses data from residents of California. The proposed initiative gives the consumer the right to learn categories of personal information that businesses collect, sell or disclose and gives the right to prevent businesses from selling or disclosing their personal information. The definition of personal information is expansive, including biometric data. Biometric data is defined as an individual's physiological, biological or behavioral characteristics, **including an individual's DNA**, that can be used, singly or in combination with each other or with other identifying data to establish individual identity.

This would affect genealogical DNA tests, the new iris, retina, facial recognition and voice prints identifications in addition to the standard finger prints.

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 cited above, 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.

Maine—As mentioned above, proposed regulation treats indexes the same as records, gleaned from the 2011 Model Vital Records Act.

New York City—As mentioned previously, the adoption of the regulation in October 2018 imposing embargo periods of 125 years for birth and 100 years for death when transferring records from the Department of Health and Mental Hygiene to the Department of Records Information Systems (DORIS) is taken from the 2011 Model Vital Records Act. We have been alerted that New York State may try to impose similar embargo periods for state vital records.

Washington State—We have been alerted a bill adopting the 2011 Model Vital Records Act may be introduced in the next legislative session.

New Access to Records, Monitoring and Reporting Issues (To read all major activities go to *the Records Access Alerts Archives*.)

Australia

Budget Cuts Result in Reduced Staffing at Australian National Archives

Belgium

Belgium Court Finds for Data Protection Agency and Gives Facebook 48 Hours to Cease Tracking Internet Users

Canada

- House of Commons Standing Committee on Access to Information, Privacy and Ethics Report on PIPEDA
- Office of Privacy Commissioner Releases Draft Position on Online Reputation—Agrees Advocates De-Indexing and Source Takedown (Right to be Forgotten)
- Parliament Enacts Law That Removes Restrictions on Access to Census After 92 Years
- Quebec to Provide Adoption Information with Conditions
- Canadian Supreme Court Decides Expectation of Privacy in Text Messages

France

- France's Data Privacy Regulator Notices Whats App To Stop Sharing User Data With Parent Facebook; France Seeking €10 Million Fine From Amazon

Gibraltar

- Gibraltar National Archives Digitized Thousands of World War II Evacuation Records

Israel

- Controversy Over Access Now that the Israel State Archives is Digitizing Their Archives

Korea

- Communications Commission on Person's Own Right to be Forgotten

Netherlands

- EU's Data Privacy Regulation Affects Access to Netherlands Family Cards Being Online

Russia

- Religious vs. Civil Marriage Records

Sweden

- Swedish National Archives To Begin Free Access to Digitized Records in 2018

United Kingdom

- National Archives Preparing for 2021 Census --England and Wales
- General Register Office Extends Birth and Death Records PDF Trial

United States

- **US** Senate Bill Introduced to Prohibit Question on Citizenship in 2020 US Census
- **US** Privacy Legislation Introduced in US Senate
- **US** President Trump Signs CLOUD Act Requiring Internet Companies to Hand Over to Law Enforcement Agencies Personal Data Regardless Where It Is Stored
- **US** MIA Recovery Network Free Online Database Aims-to-Identify-Unknown-Troops-From-WW II
- **California** Updates on California Proposed Referendum on Privacy
- **Florida** Judge Rules Death Certs Covered Under Public Records Act
- **New York City** Department of Health Proposal to Amend Health Code Permitting Additional Family Members Direct Access to Birth and Death Record Before Embargo
- **Virginia** Legislature Enacts Legislation Addressing Access to Court Databases and Court Case Records
- **Washington** Governor Inslee Vetoes SB 6617--Bill That Would Have Limited Access to Public Access to Records

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