



To: IAJGS Members-2021 Annual Session

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

Re: Public Records Access Monitoring Committee-Annual Report

Date: June 8, 2021

Committee Members 2020-2021

Jan Meisels Allen, Chairperson, Agoura Hills, California

Teven Laxer, Sacramento, California

Bert Lazerow, San Diego, California

Mark Nicholls, Edgware, Middlesex, London, UK

Peter Graber-Lipperman West Hartford, Connecticut

Catherine Youngren, Coquitlam, British Columbia, Canada

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

Long-time PRAMC member, Paul Silverstone retired earlier this year. We are delighted that the IAJGS Board of Directors appointed Peter Graber-Lipperman to the committee. Peter is a retired attorney in Connecticut who previously served as a Vice President and General Counsel of a large U.S. aerospace and defense company. He brings to the PRAMC experience with Federal legislative and regulatory drafting and comment processes.

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

Accomplishments Summary

These are highlights of what PRAMC worked on since last year's report, dated June 22, 2020:

Records Access Alert:

- 436 *Records Access Alert* postings on 31 countries plus Ancestry, Arolsen Archives, Board of Certification for Genealogists (BCG), Facebook, Google Microsoft, MyHeritage, Twitter and WhatsApp since the 2020 IAJGS Annual Meeting on August 12, 2020. While this reflects a 55% increase over 2019 reporting, due to the pandemic, many legislatures and state government regulatory bodies were not operational for at least several months impacting the amount of legislation and regulations promulgated during 2021.
- 828 subscribers to the IAJGS Records Access alert- more than doubled from 2015 and 6% increase over 2020.
- The Records Preservation and Access Coalition (RPAC) continues to promote the *IAJGS Records Access Alert* at their speaking engagements and elsewhere.
- The IAJGS survey of JGS leaders inquired about whether the leaders were aware of and/or subscribed to the *IAJGS Records Access Alert*.
- Both Judy Russell's *Legal Genealogist Blog* and Dick Eastman's *Online Genealogy Newsletter* have promoted the *IAJGS Records Access Alert*

Presentation/Panels:

- Conference presentations: IAJGS-PRAMC program at virtual 2020 IAJGS Conference with Jan Meisels Allen. Due to the pandemic, NGS in-person conference was cancelled and no opportunity to promote during their virtual conference as the RPAC panel was canceled.

- NGS requested Jan Meisels Allen to update and record a presentation on how a bill becomes a law that they will share with all their member societies. Included in the slide presentation is how to subscribe to the *IAJGS Records Access Alert*.
- *The Journal of Civic Information* article, *Secrecy in Death Records: A Call to Action* refers to IAJGS Records Access Panel at a previous IAJGS conference.

Submitted Statements:

- IAJGS Submitted statements on proposed legislation and regulations in U.S. states and jurisdictions: United States Citizenship and Immigration Service (USCIS) on proposed fee increase and to Maine Health and Human Services Committee in support of LD 601 on records access.
- Submitted statement **and testified** at virtual hearing on New York City Department of Records and Information Services proposal to license public records for educational, scholarly, non-profit and media use created predominately at taxpayer expense. *Reclaim the Records* advised they were linking to the IAJGS letter in their newsletter as “really good and thorough.”
- IAJGS affixed name to the RPAC sign-on letter for support of National Archives and Records Administration funding letter of no less than \$433 million in FY 2022 for the operating expenses.
- IAJGS worked with RPAC on presentation regarding opposition to proposed closure of Seattle National Archives Facility.
- IAJGS supported the RPAC letter on Georgia’s proposed vital records transfer and embargo period legislation.
- Promoted the Washington State Department of Health Handouts on the new vital records law which became effective January 1, 2021.

Monitoring Issues

Reported on numerous international issues from countries including: Algeria, Argentina, Australia, Austria, Belgium, Brazil, British Commonwealth, Canada, China, Colombia, Denmark, Europe, European Union, France, Germany, India, Israel, Italy, Netherlands, New Zealand, Republic of Ireland, Poland, Portugal, Russia, South Africa, Spain, Sweden, Turkey, United Kingdom, Ukraine, and United States (25 jurisdictions plus the federal government). We also monitored regulatory issues that affect genealogists if/as they may utilize these services: Apple, Amazon, Google, Facebook, Microsoft, Twitter, WhatsApp, and agencies such as the Arolsen Archives (formerly International Tracing Service), Court of Justice of the European Union, (US) Federal Trade Commission, US Supreme Court and report on organizations such as Ancestry, My Heritage and Reclaim the Records.

IAJGS Records Access Alert

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 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 828 subscribers, but 19 out of 93 IAJGS member organizations have not yet subscribed. Non-public access items are posted to the IAJGS Leadership Forum.

The “link tax” has raised its specter in Australia, Europe, Canada and the state of Maryland in the United States. This cost will be passed along to the customer—us. The issue of “right to be forgotten” is also global, Europe, South America, Pacific, Asia and in the United States. Every genealogist should be aware and concerned about the right to be forgotten as a way by which an individual’s history can be erased.

The General Data Privacy Regulation (GDPR) became effective on May 25, 2018— three years ago—(see below). Now, the issue of privacy has become even more relevant worldwide. In the United States various states have enacted privacy legislation that we also monitor and report upon. 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.

It is of the utmost importance that at least one member of each society subscribes to the *Records Access Alert* in order for societies to keep apprised of critical actions affecting records access.

IAJGS/NGS Records Preservation and Access Coalition (RPAC)

In North America, a joint committee of the IAJGS and the National Genealogical Society (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. Last year the Federation of Genealogical Societies (FGS) merged with NGS so there are now two sponsoring members of the Coalition. There is combined representation on RPAC under the NGS banner.

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.

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. In Summer 2017, Teven Laxer was appointed as the second IAJGS RPAC representative.

RPAC meets monthly by Zoom and reviews legislative issues both federal and state. The majority of legislative issues are taken from the IAJGS Records Access Alert postings.

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. The discussions by the NAPHSIS panel on amending the Model Act embargo periods has been put on hold due to the pandemic. RPAC’s recourse is to continue to advocate for more accessible records state by state. Jan Alpert and another representative to RPAC attended the NAPHSIS conference last year and were dropped by the phone call this year when they recognized RPAC was learning about their plans.
- Submitted statement on the USCIS proposed fee increase.
- Submitted statement on Georgia HB-92 regarding transfer of vital records to state archives.
- Submitted statement on Maine legislation regarding records access.
- Submitted a letter to (US) Public Buildings Reform Board copying NARA Archivist David Ferriero opposing the proposed closing of the NARA branch archives in Seattle.
- Both chair of RPAC and IAJGS representative Teven Laxer virtually attended public meeting held by

Washington State Attorney General to hear concerns and objections to the sale of NARA Facility in Seattle with over 300 people participating by Zoom.

- Submitted a letter in opposition the New York City Municipal Archives regarding their proposal to charge public and not-for-profit entities of license fees for the use of public records.
- Created and delivered three Presidential Transition Position Papers to Ted Kaufman, Co-Chair of the Biden Transition Team, and to each of the respective agencies.

National Coalition for History

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

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 2017, the two sponsoring RPAC members 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).

In 2021, the NCH worked with Senators Elizabeth Warren (D-MA) and Dan Sullivan (R-AK) to seek support for additional funding in the upcoming fiscal year (FY) 2022 budget for the National Archives and Records Administration (NARA) and the National Historical Publications and Records Commission (NHPRC).

JewishGen

PRAMC posts 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 2021 covered the IAJGS Records Access Alert postings for all of May 2021.

We are Seeing Legislation and Government Action Addressing Records and Archives Access

A) The threat of identity theft

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. Changing access to vital records gives the appearance that legislators are doing something.

Risk-Based Security's 2020 Third Quarter Data Breach Report found a 51% decrease in reported breaches compared to the same time period last year. Yet, 2020 was the worst year on record by the end of Q2 for the total number of records exposed. The third quarter added 8.3 billion records making the total number of records exposed by the end of September 2020 36 billion. Two breaches accounted for over 1 billion records and four breaches exposed 100 million records. The healthcare sector had the most breaches accounting for 11.5% of the events. Names and access credentials in the form of emails and passwords are the most exposed data. Genealogy is not listed as a cause of identity theft.

In the United States, with the changes in the health care law and how healthcare 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 a greater possibility of potential problems with personal information being accessed.

B) Budget cuts and shortfalls

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.

In Australia, the federal budget did not provide urgently needed funds for the National Archives of Australia resulting in the Archives “begging” for public donations as it needs \$67.7 million Australian Dollars to digitize records that are disintegrating or becoming obsolete.

In India, under the Central Vista Project, the original plot will be demolished while the heritage structure will be retained. The concern is about the preservation, transfer and access of the national records.

As mentioned above, The Trump Administration wanted to sell the land where the Seattle, Washington National Archives was located and planned to move the archives partly to southern California and Kansas City—over 1,000 miles from those whose records would be in the archives: Alaska, Idaho, Oregon, and Washington State.

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 government 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 a few 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 several main issues to which PRAMC devoted many hours, in addition to the usual monitoring and letter writing on specific issues:

Privacy

Whether in the European Union through the General Data Privacy Regulation (GDPR), the *IAJGS Records Access Alert* has many postings devoted to privacy with government concerns with big technology—Google, Amazon, Facebook and Apple (GAFA). The GDPR codified the “right to be forgotten” as well as the “right of erasure”. These “rights” spread worldwide: Asia, Europe, North America, South America and South Pacific. This affects social media, press, as well as access to vital records.

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 27-member countries. Prior to the GDPR becoming effective, there was a patchwork of national rules and now there is one law for everyone. The GDPR was designed to ensure that precautions are made to protect personal data. Failure of protecting personal data results in it being subject to an attack or data breach which is required to be reported to both their customers and the data regulators within 72-hours of being made aware of the incident. It has affected how businesses obtain, store and use personal information. Privacy, Privacy, Privacy is the new issue worldwide with positive and negative results.

In the European Union, their Court of Justice has twice invalidated the data transfer agreements between Europe and the United States-- Safe Harbor and Privacy Shield— and a third case is working its way toward that highest European Court again over the same issues.

For those of us who rely on searches to assist us in our genealogical research, the GDPR has major impacts on us as it will affect our ability to research links from certain countries or from certain parts of the Internet.

Facebook lost its fight over an initial order from the European Union privacy watchdog in Ireland threatening its transfers of users' data across the Atlantic. The Data Protection Commissioner can proceed with an inquiry that could lead to a ban on Facebook's data transfers from the European Union to the United States, the High Court ruled. This is a result of the July 2020 Court of Justice of European Union's decision which invalidated the then data-transfer agreement between the EU and the United States called "Privacy Shield" over fears citizens' data isn't safe once shipped to the U.S.

In England, the National Health Service Plans to share its 55-million patients' records with academic and commercial third parties and individuals have until this June 23 to opt-out of having their health data scraped into a new database. This will include information on mental and sexual health, criminal records and abuse. Privacy advocates are upset.

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 U.S., 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 2020 US census is not devoid of litigation over "differential privacy" and whether it meets the federal legal requirement for keeping private the personal information of people who participated in the 2020 Census while still allowing the number to be sufficiently accurate for the process of redrawing congressional and legislative districts. The first challenge is from Alabama and 16 states have backed Alabama's challenge. Differential privacy adds mathematical noise or intentional errors to obscure any given individual's identity while still providing statistically valid information. In a test using 2010 census data, which was released without the obscuring technique, bureau statisticians said they were able to re-identify 17% of the U.S. population using information in commercial databases.

The privacy issue also affects DNA testing. Two U.S. states, Maryland, and Montana have enacted laws that restrict law enforcement's use of genetic genealogy. In Maryland investigators will need a judge's signoff before using the method in which a "profile" of thousands of DNA markers from a crime scene is uploaded to genealogy websites to find relatives of the culprit. The law also requires that **genetic genealogists** must be licensed by October 1, 2024. It also stipulates that a laboratory using sequencing techniques using a direct-to-consumer or publicly available open data personal genomics database has to provide notice to its users and the public that law enforcement may use its service sites to investigate crimes or to identify unidentified human remains.

In Montana, the law requires government investigators to obtain a search warrant before using a DNA database unless the consumer has waived the right to privacy.

In New York State, legislation was introduced over privacy concerns with the municipal DNA identification indexes. The proposed law would create a single state-run index and requires municipalities to expunge any DNA records stored in a municipal DNA identification index within 90 days of the bill becoming a law.

In Florida, online groups are suing the state for a new law which restricts social media companies and what they do with political candidates. The law prohibits social media platforms from willfully deplatforming a candidate. The law will enable the state to fine large social media companies \$250,000 a day if they remove an account of a statewide political candidate and \$25,000 for candidates for local office.

With enactment of the California Consumer Privacy Act in 2019 which became effective July 2020, other states are also looking to enact or have enacted legislation. There are several bills being reviewed in the United States Congress to also protect the consumer's privacy while not violating US constitutional rights.

Anti-Trust

Anti-trust issues, especially toward the large social media and technology companies, are concerns both in the European Union and the United States.

In Germany, the Federal Cartel Office (competition authority), *Bundeskartellamt*, launched a probe into whether Google Germany, Google Ireland and its parent company Alphabet are exploiting their market dominance in the way they handle data. Also in Germany, their media, internet and advertising industries filed an antitrust complaint on April 26, 2021 with *Bundeskartellamt*, against Apple alleging the new iPhone privacy settings represent a market abuse and a violation of competition law.

Italy's antitrust authority, *Autorità Garante della Concorrenza e del Mercato*, opened an inquiry into Google Inc., Apple Inc. and Dropbox Inc. over cloud computing services over alleged improper commercial practices and possible inclusion of unfair clauses I contract conditions.

U.S. Federal legislation was introduced aimed at restoring competition by strengthening antitrust laws to help enforcers better deal with harmful conduct and mergers. Senator Klobuchar (D-MN).

Thirty-eight states and territories filed an antitrust lawsuit against Google alleging a monopoly by Google in general search. This is the third anti-trust lawsuit filed against Google in several weeks. The complaint, says, "As the gateway to the internet, Google has systematically degraded the ability of other companies to access consumers."

Facebook is being sued by a consortium of 48 US attorneys general (46 states, District of Columbia and Guam) and the Federal Trade Commission (FTC) claiming it committed anti-competitive acts that puts rivals out of business.

In Wisconsin, a group of small Wisconsin newspapers—24-- filed a federal lawsuit claiming Google and Facebook's control of digital advertising threatens the publications' existence and violates antitrust law.

Digital Service Taxes

This is a method of charging the internet service organizations a fee or tax for consumers.

The European Union passed a copyright directive in 2019 which encourages such a link tax by providing for minimum standards for all EU member countries. The EU directive does not call for negotiations by media organizations.

In Europe, France decided to impose the digital services tax and former President Trump promised retaliatory taxes on French goods. France suspended collection of its digital service tax while international negotiations were under way. In June 2021, the U.S. Trade Representative (USTR), said the United States will impose tariffs on the United Kingdom and five other countries— U.K., Austria, India, Italy, Spain and Turkey-- in response to their digital taxes on U.S. technology companies. The tariffs will be suspended for six months as it seeks to negotiate an international resolution. The U.S. is looking to resolve the issue through the Group of 20 economic powers and other international groups. The proposed U.S. tariffs of 25% would target imports worth nearly \$2 billion from the six countries, including imports worth over \$800 million from the U.K. and more than \$300 million each from Italy and Spain. The EU Parliament is looking to levy a tax been 2-6% on local revenues of platform giants.

On June 5, the G-7 announced an "historic" deal to make multinational companies pay more tax. They also agreed in principle to a global minimum corporate tax rate of 15% to avoid countries undercutting each other. The deal announced on June 5 is between the U.S., the UK, France, Germany, Canada, Italy and Japan, plus

the EU. The deal will put pressure on other countries to follow suit, including at a G-20 meeting to be held in July. (G-20 will include China, Russia, Brazil and more). Currently, companies can set up local branches in countries that have relatively low corporate tax rates and declare profits there. This means they only pay the local rate of tax, even if the profits mainly come from sales made elsewhere. Twenty percent of any profit above that would be reallocated and taxed in the countries where they operate to global companies with at least a 10% profit margin. The G-7 will aim to make companies pay more tax in the countries where they are selling their products or services, rather than wherever they end up declaring their profits. Secondly, they want a global minimum tax rate so as to avoid countries undercutting each other with low taxes.

Denmark's executive branch has pending legislation that would require technology companies to pay publishers if news content is posted on their website.

To get around this, Facebook launched a separate news tab in the United Kingdom, and other countries, where it will pay to license news for its subscribers. Google also agreed to license news from publishers for its Google News product. They have signed deals in Argentina, Australia, Brazil, Canada, Germany, and the United Kingdom.

Australia's Parliament passed legislation that requires Google and Facebook to negotiate with news outlets to pay for their content or face arbitration. Google and Facebook- that fiercely opposed laws that would make them negotiate over fees they would pay for links driving clicks to their platforms have signed multi-year contracts with Australia's three largest media firms.

The 2021 Canadian Federal Budget calls for a three percent digital services tax on revenue from web giants such as Google, Facebook, Amazon and more that are dependent on Canadian content. It is estimated the new tax will increase revenue by \$3.4 billion Canadian over five years.

In Maryland, they enacted the first-in-the-United States law, a digital tax on digital advertisements of up to 10%.

Arkansas had legislation introduced, that was recommended for study, that would impose a 7% tax from ad-generated revenues from social media companies' gross revenue for social media advertising in Arkansas, plus \$1.00 for the average number of Arkansas account holders during a calendar year.

Right to be Forgotten

Late in 2020, the Orissa High Court in India emphasized the importance of the right to be forgotten.

In November 2020, a Swedish Court rejected Google's case about Sweden's Data Protection Agency (DPA) imposing a fine of about 7 million Euros/75 million Kronor or \$8 million USD on Google for failure to comply with the GDPR on delisting right to be forgotten requests.

In February 2021, Brazil's Supreme Federal Court ruled decided that people involved in cases of great repercussion cannot demand the non-disclosure of information about what happened, nor the deletion of images and other content broadcast in the media.

In March 2021, the United Kingdom High Court ruled that a U.S. website is not subject to extraterritorial scope of the GDPR. The United Kingdom, is no longer part of the European Union.

In May 2021, Portugal's president promulgated the Charter of Human Rights in the Digital Age. The law has 21 articles that guarantee rights such as the "right to be forgotten" amongst other rights.

Some U.S. media outlets—*The Boston Globe*, *Cleveland.com* and the *Bangor Daily News* have started to take requests to remove old crime stories from Google which is responsible for 97% of their search traffic.

Google has approximately 90 percent of the European market, varying by country. According to the most recent transparency report, in the period May 29, 2014-June 5, 2021, Google reported receiving roughly 1.109 million requests calling for the delisting of about 4.3 million URLs. 52.6 % of those URLs were delisted. Google is the 21st century library. Imagine what people would say if every library in the world burned half of their books and magazines?

Microsoft's biannual transparency report for July 1,-December 31, 2020 was released this Spring. Bing, Microsoft's search engine, reported there were 2,867 requests received representing 10,280 URLs. They accepted 5,245 URLs for removal-or 51 percent. Since the "right to be forgotten" began in May 2014 until the end of December 2019, Microsoft processed 41,613 requests representing 133,972 URLs-47% of the requests were accepted- 55 percent were rejected.

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

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