



To: IAJGS Members-2022 Annual Session

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

Re: Public Records Access Monitoring Committee-Annual Report

Date: June 20, 2022

Committee Members 2021-2022

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

Jane Berenbeim, ex officio, President IAJGS, New York, NY

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

These are highlights of what PRAMC worked on since last year's report, dated June 08, 2021

Records Access Alert:

- 490 *Records Access Alert* postings on 29 countries plus 23andMe, Amazon, Ancestry, Arolsen Archives, Associated Press, Facebook/META, FamilySearch, Forensic Genealogy, Genetic DNA, Genetic Privacy, Global Minimum Tax, Google, Holocaust, Identity Theft, International Archives Day/Week, Internet Archive, Microsoft, MyHeritage, Reclaim the Records, Sunshine Week, Twitter since the 2021 IAJGS Annual Meeting on August 04, 2021. With the ongoing pandemic, many legislatures and state government regulatory bodies started to reopen on a partial basis but their reduced access did not appear to impact the amount of legislation and regulations promulgated during 2021-2022. Note there are states that meet until later in the year or year-round.
- 852 subscribers to the *IAJGS Records Access Alert*-almost tripled from 2015 and 3% increase over 2021.
- The Records Preservation and Access Coalition (RPAC) continues to promote the *IAJGS Records Access Alert* at their speaking engagements and elsewhere.
- in their litigation before the City of New York, *Reclaim the Records* included the IAJGS October 2020 submitted testimony before the City of New York Department of Records & Information Services .
- Both Judy Russell's *Legal Genealogist Blog* and Dick Eastman's *Online Genealogy Newsletter* have promoted the *IAJGS Records Access Alert*

Change in Process

A change in process for submitting statements on behalf of the IAJGS was initiated by IAJGS President Jane Berenbeim in 2022. Any statement must now be approved by the IAJGS Board **prior** to submission; however, the Board delegated authority to the IAJGS President to act on its behalf without board prior approval in urgent circumstances on matters related to PRAMC. Previously, the statements were always shared with the board after submission due to time sensitivity, however the IAJGS President is *ex officio* to the PRAMC, and therefore, is always involved with the committee's deliberations and crafting the final statements.

Submitted Statements:

- IAJGS Submitted a statement on January 30, 2022, regarding the USCIS Proposed Rule regarding the Genealogy Index Search Request and Genealogy Records Request supporting the continued use of the existing forms G-1041 and G 1041A and the desire for the records to be turned over to the National Archives.
- IAJGS supported the RPAC letter on USCIS Proposed Rule regarding Forms G-1041 and G 1041A.
- IAJGS Supported the RPAC letter regarding Nebraska changing access to vital records for family members.
- IAJGS Supported RPAC's written and oral statements regarding their objection to the proposed removal of the National Archives Washington State regional location and removal of files to California and Kansas.
- IAJGS continues to support RPACs work to get the Social Security Death Index (SSDI) also known as the Death Master File to update and make it available to the public. It has ceased making it public due to the Omnibus Reconciliation Act 2013 limitation of three years, and no government agency has taken on the responsibility for public access.
- Sent letter of appreciation to outgoing US Archivist Ferriero on his retirement after ten years of service.
- Supported RPAC's Letter to President Biden on selection of a new Archivist of U.S.
- IAJGS continues to support RPAC's membership with the National Coalition for History (NCH) along with the National Genealogical Society by both organizations jointly paying the RPAC membership dues.

Monitoring Issues

Reported on numerous international issues from countries including: Algeria, Argentina, Austria, Australia, Belgium, Canada, European Union, France, Hungary, India, Ireland, Italy, Lithuania, Luxembourg, Malta, Morocco, Netherlands, New Zealand, Philippines, Poland, Portugal, Russia, Scotland, Spain, South Africa, Ukraine, United Kingdom and the United States (26 jurisdictions plus the federal government). We also monitored regulatory issues that affect genealogists as they may utilize these services: Apple, Amazon, Ancestry, DNA testing, Facebook/META, Google, identity Theft, Microsoft, privacy, Twitter, WhatsApp, and agencies such as the Arolsen Archives (formerly International Tracing Service), Court of Justice of the European Union, EU Court of Human Rights, (US) Federal Trade Commission, (US) Department of Justice, (US) National Archives, (US) Supreme Court and report on organizations such as Ancestry, FamilySearch, MyHeritage 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 Research Division (RD) 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 852

subscribers, but 13 out of 90 IAJGS member organizations have not yet subscribed. Non-public access items are posted to the IAJGS Leadership Forum.

Privacy

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 450 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.

The European Data Protection Supervisor, said there isn't enough privacy enforcement against tech companies like Meta and Google, hinting at a bigger role for a "pan-European" regulator. Many in the EU are unhappy with the Irish Data Protection Regulator saying she is not doing enough, failed to rein in data protection abuses by big companies. The Irish Data Protection Regulator has many multinational companies headquartered in Ireland, making this regulator a target for the other regulators.

Canada’s government unveiled C-27 on June 16, 2022. This bill is different than the previously reported bill C-11 , the Consumer Privacy Protection Act (CPPA) and Personal Information and Data Protection Tribunal Act (PIDPTA) introduced in late 2020. The proposed legislation includes three new sections around consumer privacy protection, personal information and artificial intelligence (AI). If enacted it would replace the Personal Information Protection and Electronic Documents Act (PIPEDA). The privacy commissioner of Canada would also have broader powers under the act, including the ability to order a company to stop collecting data or using their personal information, as well as being able to penalize non-compliant organizations with fines of up to five per cent of global revenue or \$25 million (Canadian) , whichever is greater, for the most serious offences.

Privacy continues to be a major issue with several states: California, Colorado, Connecticut, Utah and Virginia enacting strong privacy legislation as well as Congress debating several privacy bills. The United Kingdom is in the process of reforming its privacy rules and the European Union enacted the General Data Protection Regulation (GDPR) which became effective on May 25, 2018. With many US/multinational companies having their European headquarters in Ireland and Luxembourg -due to tax favorability-there have been a number of postings regarding issues affecting multinational companies.

Federal Trade Commission (FTC) Chairperson Lina Khan has called for a paradigm shift on data privacy in her first major privacy address since becoming the chair of the FTC. She has called for the federal government to expand its policing of data abuses to account for the vast “surveillance” enabled by modern technology.

The “American Data Privacy and Protection Act” was introduced in (US) Congress on June 3, 2022. It would provide a national standard on what data companies can gather from individuals and how they can use it. It’s a bipartisan bill on federal data privacy that was introduced with the intent to produce a

comprehensive data privacy framework that will hold companies to high standards of data security and minimization.

Data security is a major issue and the European Union with its GDPR has stronger rules than those in North America which affects data exchange between Europe and the United States. This has resulted in several agreements being voided by the EU's Court of Justice: Safe Harbor and Privacy Shield, as Europe does not believe the United States has adequate protections for privacy of individual data. A third case is working its way to the same EU Court over the same issues. This is an issue that is continued to be addressed between the U.S. and the European Union.

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.

(US) SB 3620, introduced February 9, 2022. would establish a Commission for the Comprehensive Study of Health Data use and Privacy Protection. Online disinformation is a growing concern globally. In the European Union 34 tech companies and advertising bodies have signed up to an updated EU code of practice against online disinformation. Signatories including Facebook-owner Meta, Google, Twitter, Twitch, TikTok and Microsoft have agreed to take further steps to halt the spread of fake news and propaganda on their platforms, while sharing more country-specific data and agreeing to pay fines as high as 6 percent of their global turnover for non-compliance. According to European Commission Vice President Vera Jourova, Russia's invasion of Ukraine, the COVID-19 pandemic and Britain's withdrawal from the European Union (BREXIT)accelerated the EU's commitment to counter disinformation. The revised EU code will be enforced by the new EU's Digital Services Act-therefore, it is not voluntary.

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.

Census

Census was also an issue during the past year and continues to be a legislative issue. The 1950 US Census was released in 2022-72 years after it was taken. The new chief statistician for the Office of Management and Budget (OMB) announced that the (US) federal government is taking steps toward revising racial and ethnic classifications in future censuses.

The U.S. House Committee on Oversight and Reform voted to approve the House Census Communications Act. The bill would prohibit efforts to intentionally relay communications about a census that are materially false and intended to prevent or delay a person's participation. The bill would establish civil penalties for such conduct in alignment with the False Claims Act. As of this writing the bill still has to be voted upon by the full House and then the Senate.

One of the purposes of the decennial census is apportionment of the representation among the states. The release of Census Bureau's data caused redistricting problems because the data release was delayed due to a controversial due to redistricting and the delay of the data release due to COVID and the Trump administration. There were new techniques used by the Bureau which several states litigated-and lost, but delayed their states redistricting.

Canada held its census in May 2022. Australia held its census in August 2021.

The 1921 United Kingdom Census for England and Wales was released on January 6th—the 1921 Scotland census will be released in the second half of 2022-early 2023.

Anti-Trust

There were a number of postings about anti-trust concerns from Australia, Canada, the European Union and the United States. Probes were launched against Apple, Google, Meta/Facebook and other social media companies, by individual EU states as well as the bloc as a whole. Not only are there several bills before the US Congress, the EU Digital Markets Act also is a vehicle addressing antitrust and merger controls. An example of a bill before Congress that was reported on in June 2022, was the *Consumer Protection Remedies Act of 2022*, which fully restores the FTC's ability to obtain monetary and other relief for consumers under Section 13(b) of the FTC Act by going directly to federal court.

This bill is a result of a US Supreme Court decision *AMG Capital Management LLC v. FTC* that gutted the commission's enforcement authority under Section 13(b) of the FTC Act. The Supreme Court decision was also reported on in the *IAJGS Records Access Alert*.

In January of 2022, the *IAJGS Records Access Alert* reported, 'Germany's antitrust regulator, the *Bundeskartellamt*, concluded that Google's business meets the threshold for special abuse control which was established under an update to the competition law targeted at digital giants and passed at the start of last year, to regulate internet companies, and was also considering cases involving Amazon, Apple and Facebook owner Meta. The law is the, German Competition Act (Section 19a of the German Competition Act (GWB)), which entered into force in January 2021.

Right to be Forgotten

In May 2022, Spain hit Google with a fine of €10 million for violating the EU's right to be forgotten-breaches of the EU's GDPR for sharing information that could be used to identify citizens requesting deletion of their personal data under the EU law.

In April 2022, the Advocate General of the European Court of Justice opined that when Google is asked to remove something from its search results, it is responsible for fact-checking the results. This is a non-binding opinion. The Court's decision is expected later this year.

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 18, 2022, Google reported receiving roughly 1,286,849 requests to delist a total of 5,014,426 URLs. Google reported that it delisted 49.1% of the requests, and did not delist 50.9% of them.

Microsoft reported its right to be forgotten requests for the period May 2014-December 31 2021. Microsoft reported 49,441 requests to delist 168,481 URLs of which they accepted 79,009 and rejected 89,472 for a 47% acceptance of URLs.

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. IAJGS and NGS are the sponsoring members of RPAC and the only voting members. RPAC holds monthly conference calls and shares information via e-mail. Two years ago the Federation of Genealogical Societies (FGS) merged with NGS so there are now two sponsoring members of the Coalition. Prior to the merger, FGS also had their own voting representation on RPAC.

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.

RPAC meets monthly by Zoom and reviews legislative issues both federal and state. RPAC uses *the IAJGS Records Access Alerts* as the predominant resource for their conference calls and calls for action.

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.

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). In June 2022, the NCH is again working on Fiscal Year (FY) 2023 budget, a funding bill that provides a total of \$452 million for the National Archives and Records Administration (NARA), \$2 million above the President's request. Consideration of the bill is expected in July 2022

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, 2022, covered the IAJGS *Records Access Alert* postings for all of May 2022.

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

A) The threat of identity theft

With the explosion of identity theft, 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.

- The Identity Theft Resource Center (ITRC) released its U.S. data breach findings for the first quarter (Q1) of 2022. A word search for genealogy, family history and ancestry received no responses. Therefore, based on the word search it is plausible to assume that genealogy/family history were not causes of identity theft as reported in the report. In the IAJGS statements we continue to mention that

reports find that genealogy/family history and ancestry are not causes of identity theft. The ITRC report publicly reported data compromises totaled 404 through March 31, 2022, a 14 percent increase compared to Q1 2021. It is the third consecutive year when the number of total data compromises increased compared to Q1 of the previous year.

- Phishing and Ransomware remain the #1 and #2 root causes of data compromises; however, a majority of data breach notices in Q1 2022 did not list a root cause of the breach.

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.

In England, the National Health Service (NHS) announced the end of 2021 they planned to share general patient medical information from their records but after an outcry from members of Parliament, doctors and health charities this was delayed. They also provide an opt-out for the patients from sharing the data.

Amazon teamed up with Teledoc to bring voice-activated health service to Alexa for non-emergency services around the clock. Some hospitals already use Alexa as a voice assistant in patient rooms. In Great Britain, Alexa works with that country's National Health Service to help answer medical questions with advice from the country's official website. While only audio now, video will be added soon.

The consumer genetics firm, 23and Me, announced they signed an agreement to acquire Lemonaid Health- a firm that offers online access to a variety of telemedicine and pharmacy services. In 2021, 23andMe announced it was going public through a firm backed by billionaire Richard Branson that raised privacy questions. 23andMe also shared health data with GlaxoSmithKline for use in developing drugs. They did ask their clients for explicit consent prior to sharing the data.

Some DNA testing companies announced they were sharing their DNA data with law enforcement including the FBI. This is also a controversial topic within the genealogical community.

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.

Last fall the US House Oversight and Reform Committee approved funds for a spending bill to address the pandemic-induced backlog of records requests that kept veterans and their families from accessing benefits, including medical treatment. The \$60 million to the National Archives will go to address backlogs in responding to veterans' requests for military personnel records, and to increase digital preservation efforts and to address existing Freedom of Information Act requests.

The National Security Archive wrote that the National Archives and Records Administration's (NARA) budget has remained stagnant in real dollars for nearly thirty years. At roughly \$320 million dollars when adjusted for inflation, its budget represents 0.0076% of the federal budget.

In Australia, their National Archives ramped up digitization of at-risk record after securing a funding lifeline last year. A study recommended structural reforms, changes to the Archives Act and long-term funding of

up to \$167 million, which has been endorsed by the National Archives director general at the time David Fricker. A government response more than 18 months later included only \$67 million in additional funding for the agency to digitize and archive its most at-risk records, bring on staff to deal with a backlog of access requests, and bolster cyber defenses.

Digital Service Taxes

This is a method of charging the internet service organizations a fee or tax for consumers. Over 130 countries agreed to overhaul the international tax system that will prompt nations to adopt a global minimum tax of 15 percent and change taxing rights so that large multinational corporations are taxed based on where their goods and services are sold, rather than where they operate.

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.

Canada

Canada's government introduced, a bill proposing a fair-revenue sharing system the Online News Act, (C-18) requiring companies such as Google and Meta/Facebook to pay for news content on their platforms. The bill seeks to regulate digital news intermediaries to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability. The Act "establishes a framework, through which digital news intermediary operators and news businesses may enter into agreements, respecting news content that is made available by digital news intermediaries". This follows the EU and Australia.

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!

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.

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