

## **Will You Be Able to Get Records In The Future?**

IAJGS Sponsored Session

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Globally, access to public records is becoming increasingly difficult. Whether it be due to the expansion of the “right to be forgotten/erased” which will prevent genealogists from searching their ancestry by names, places or events; or by governmental legislation and regulations that impinge on our access to vital records, our access to genealogically relevant records is being challenged. You need to become engaged in your state/country to help retain access to these records that are so important to genealogical and historical research.

### **PRAMC Record Access Alerts**

IAJGS provides an announcement list on records access issues. Depending on what activity there may be, postings may occur several times a day, or not for several days. It is the best way to stay informed of records access activities around the globe. Registration is required. To register for the IAJGS Records Access Alert go to:

<http://lists.iajgs.org/mailman/listinfo/records-access-alerts>. You will receive an email response that you have to reply to or the subscription will not be finalized. It is required to include your organizational affiliation (genealogy organization, etc.). To access the archives, you must be registered. The archives are accessible at:

<http://lists.iajgs.org/mailman/private/records-access-alerts>.

### **FAQs and Glossary**

Earlier this year, the IAJGS PRAMC developed both Frequently Asked Questions (FAQs) and a Glossary. They are located on the IAJGS website and may be accessed at:

<http://www.iajgs.org/blog/legislation/pramc-faq/>

Subscribers to the IAJGS Records Access Alert who have questions may write to [pramc@iajgs.org](mailto:pramc@iajgs.org) and members of the PRAMC will reply.

### **Genealogists' Declaration of Rights**

Two years ago, the Records Preservation and Access Committee (RPAC) created the Genealogists' Declaration of Rights. RPAC is sponsored by the Federation of Genealogical Societies (FGS), the International Association of Jewish Genealogical Societies (IAJGS), and the National Genealogical Society (NGS) and is supported by the Association of Professional Genealogists (APG), the Board for Certification of Genealogists (BCG), the American Society of Genealogists (ASG), and the International Commission for the Accreditation of Professional Genealogists (ICAPGen). Members of RPAC meet monthly to advise the genealogical community on ensuring proper access to vital records and on supporting strong records preservation policies and practices.

The petition will be used to educate legislators, both (US) federal and state, that their constituents desire records to be accessible. As of the writing of this handout, there have been 10,371 signatures collected. If you would like to sign the petition, you can do so electronically by going to: <http://bit.ly/gen-declaration>.

## **Right to be Forgotten and Effect on Access to Records Access Globally**

Worldwide privacy issues are increasingly becoming prominent—whether it is the worldwide creep of the “right to be forgotten” or government regulation of what a search engine may or may not do. This pits privacy and freedom of speech against each other. In Europe, privacy prevails, while in the US, freedom of speech is part of our Constitutional rights. Those with roots in any of the 28 European Union (EU) countries should be concerned with this practice of “erasing history”. In the Spring of 2014, the Court of Justice of the EU (CJEU) declared residents of the EU had the “right to be forgotten” when they decided that a Spaniard who had once been declared bankrupt was entitled to have links to reports of his financial difficulties hidden from anyone who searched his name on Google. This declaration applies to all search engines, not just Google, which has the largest market share in Europe.

While Google has “delinked” about 41 percent of the requested links for the first year (as of May 2015), the French Data Privacy Regulator, CNIL, directed Google to delink from all their databases, not just in France—declaring that anywhere in the world, even those websites outside of the EU were subject to the ruling, upholding a 2015 French Court decision of extraterritoriality. Google offered a compromise based on geolocation of a person’s IP address. For example, if a German resident asks Google to delist a link popping up under searches for his or her name, the link will not be visible on any version of Google’s website, including Google.com, when the search engine is accessed from Germany. However, the requested “delinked” site would be visible from other countries in the EU—such as France or the United Kingdom. In March 2016, the CNIL found Google’s compromise inadequate and fined Google € 100,000, stating, “the different geographical extensions, i.e. .ca, .com, .es, .fr, .uk, etc. are not considered separate treatments but a service adapted to the national language of each country.” Google plans to appeal. The French Data Privacy Regulator is also the president of the Article 29 Working Group—EU Countries’ data regulators. Countries outside of the EU, such as Argentina, Brazil, Hong Kong, Japan, Mexico, Russia and more countries have either legislatively or by judicial action adopted the “right to be forgotten.”

## **General Data Protection Regulation**

For the past four years, the EU has been working on an updated draft General Data Protection Regulation (GDPR). The dialogue - the EU Council, Parliament and Commission, reached a political agreement in December 2015. In April 2016, both the Council and the Parliament formally adopted the GDPR. From its original introduction in 2012 to what was approved in April 2016, the GDPR had 3,999 amendments, more than any other piece of legislation in the history of the EU Parliament. The GDPR will enter into force 20 days after its publication in the Official Journal, and will not be fully applicable for two years, providing each of the 28-member countries time to amend their country’s legislation to comply with the new EU regulation. The GDPR will codify the “right to be forgotten” requiring any company to delete personal information, not just search engines. The provision does not apply to deceased individuals and requires individual states (countries) to provide personal data for archival purposes for holocaust, war crimes, etc. The GDPR also requires consumers to give explicit consent to process their data. Additionally, companies based outside the EU are required to obey the EU laws when offering services in the EU (extraterritoriality).

A copy of the GDPR adopted by the Council at its first reading is available at: <http://data.consilium.europa.eu/doc/document/ST-5419-2016-INIT/en/pdf>.

This version was unchanged by the EU Parliament.

## **Data Transfer between the US and the EU**

Last fall, the Court of Justice of the European Union (CJEU) invalidated a 15-year “safe harbor” international agreement permitting digital data transfer between the US and the EU. In a case against Facebook, the court found the data transfer agreement violates the privacy rights of Europeans by exposing them to allegedly indiscriminate surveillance by the U.S. government. The dissolution affects over 4,000 businesses, including genealogical and DNA firms as well as Google and Facebook, which collect and mine data from European users and send it to their home bases in the United States, thus sharing data on EU residents. Also in March 2016, an agreement was announced, known as the “Data Shield” between the EU Commission and the United States. However, members of the Article 29 Working Group have expressed dissatisfaction that the agreement does not go far enough. The EU Commission and the United States finalization of the reform of the EU Data Protection Rules are applicable to all companies that provide services in the EU market, regardless of where the company is headquartered.

## **Model State Vital Statistics Act**

The responsibility for the collection, registration and reporting of vital statistics (records for births, deaths, fetal deaths, marriages, divorces and annulments) in the United States is vested in the 50 states, the City of New York, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands.

The Model State Vital Statistics Act (Model Act) was developed to serve as a model for states and the other jurisdictions in preparing laws and regulations on the collection and publication of vital records, as well as the indices to those records. The first Model Act was developed in 1907 by the Bureau of the Census and has been revised periodically. The last revision of the Model Law and regulations was in 1992.

The Model Act currently restricts access to birth records for 100 years and restricts access to death, marriage, and divorce records for 50 years. In May 2011, a working group consisting of state and local vital statistics executives issued a final draft of revisions to 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 National Association for Public Health Statistics and Information Systems (NAPHSIS) endorsed the Model Act in June 2011. Several vital records officials introduced the 2011 Model Act in their state legislatures. The Department of Health and Human Services (HHS) put the 2011 Revision “on hold” in April 2012. Having not much success in the legislative arena, NAPHSIS is focusing on the regulatory route to get some, if not all, of their Model Act adopted by the states. According to their website, NAPHSIS has a strategic goal to be the national authority on vital records. According to the Center for Disease Control (CDC) web page on the model act, which hasn't been updated since March 21, 2012, DHHS is still reviewing the proposed revisions. A link to the 1992 Act can be found here.

<http://www.cdc.gov/nchs/data/misc/mvsact92b.pdf>

A link to the proposed 2011 revisions can be found here.

<http://www.naphsis.org/Documents/FinalMODELLAWSeptember72011.pdf>

NAPHSIS maintains a web page with links to those states with online records.

<https://naphsis-web.sharepoint.com/Pages/USVitalRecordsOfficesOnline.aspx>

IAJGS is aware of the following legislative activity affecting public records in the past year:

### Maine

IAJGS has been working with the Maine Genealogical Society and has been privileged to be considered by the Maine Department of Health Services Office of Vital Records as a Stakeholder during the 5-years of working, first on the legislation and the three years on the proposed regulations. IAJGS submitted concerns with the draft regulations prepared by the Maine department and submitted the comments in October 2015. In February 2016, IAJGS and other stakeholders received the “final proposed regulations,” with the caveat that no stakeholder may contact the state staff further. In March 2016, we were advised that additional changes will be made by staff, further delaying any notice of proposed rule-making (NPRM), which has yet to be announced. Additionally, attached was the first ever state staff proposed Code of Ethics Disclosure Agreement. We are not able to contact staff regarding that either. The state staff is following directions from the State Attorney General’s office which also changed the “shall” to “may” provisions in direct contradiction of the state statute. According to the Governor, there is no requirement for the proposed rules and Code of Ethics to go through the Attorney General. However, the Office of Vital Records decided to go through the Attorney General’s Office. There is a known dispute between the Governor and Attorney General on many issues. The proposed rules will have to go through the NPRM procedure. Included in the proposed rules is the 2011 Model Vital Records Act provision that indexes are to be treated with the same embargo periods as the actual vital record.

### Nevada

The Nevada Division of Public and Behavioral Health issued a notice regarding the requirement of proof of relationship to ensure the applicant has a “direct and tangible” interest in the birth or death record they have requested. The requirement to show proof became effective on 28 March 2016. Nothing has changed either by statute or regulation with the current limitations of who may obtain copies of birth and death records. Vital records in Nevada are considered confidential. However, death records over 50 years since date of death are open to the public.

### **Federal Action on Access to the Death Master File**

U.S. Congress enacted the Bi-partisan Budget Act P.L.113-67 in December 2013 and the proposed regulations to access the limited Death Master File (DMF) which commercially is known as the Social Security Death Index (SSDI) in March 2014. Congress gave the responsibility to determine certification to the U.S. Department of Commerce. The Department of Commerce promulgated interim rules in 2014 and the final rules have yet to be promulgated although comments were submitted in January 2015. While the interim and proposed final rules did permit forensic genealogists to have access, they imposed very arduous and financial security requirements that most genealogists would be unable to meet. Additionally, the limited data elements in the DMF make it all but unusable for meaningful genealogical searches.

No new bills specific to DMF access were introduced in 2016 and no existing holdover bills are expected to address the issue during 2016. IAJGS and RPAC had hoped to have an amendment introduced to existing bills still being considered by Congress. The amendment would address the issue of access to the DMF without the three year embargo period.