

Genealogy under Fire: Government Actions to Impede Access to Records YOU Need

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The genealogical community is under siege worldwide due to governmental or repository action that diminishes access to genealogically relevant records—birth, marriage, divorce, annulment, death and census records. Without access to such records, genealogists cannot do their family history research regardless if it is a hobby or occupation. The access restriction is fueled by the misunderstanding that access to these records causes identity theft and the way to reduce identity theft is restricting access. This is not a US-only issue as we are facing this worldwide.

There are different organizations that are working to retain access to public records including—IAJGS through its Public Records Access Monitoring Committee (PRAMC) and the Records Preservation and Access Committee (RPAC).

While most of the PRAMC work is informing you about what may be occurring in reducing access due to government or repository actions, PRAMC also submits statements to governmental bodies and works with legislative staff and representatives regarding pending legislation or regulations. Over the years we have had a number of successes that have resulted in **you** still being able to access records. IAJGS works with local genealogy groups and other national genealogical organizations—below are a few examples of our recent and past successes:

- **European Union** - Letters were sent to 28 Ministers of Justice of EU countries regarding proposed data privacy regulations for “right to be remembered” vs. their “right to be forgotten” and “right to erasure” in public records.
- **International Tracing Service (ITS)** - Letters were sent to US Secretary of State and German Minister of Interior regarding free access to ITS records to the public and different depositories
- **California** opened Voter Registration Records after 100 years from creation of the record, but does not affect those records that were microfilmed or digitized prior to 1989. IAJGS was critical in getting all parties to agree to this new law.
- **Connecticut** - legislation was defeated that would have required genealogists to be treated differently than other records requestors. Current state law was retained, permitting genealogists’ immediate access to vital records.
- **Maine** allowed genealogists immediate access to records via researcher card rather than waiting the newly established 75-50-25 years’ embargo periods. IAJGS and RPAC on stakeholders group developing regulations.
- **Pennsylvania** - birth records open for the first time after 105 years and death records after 50 years-now on-line.
- **US** - Submitted statements to Congress and Department of Commerce regarding forensic genealogists being certified for access to Death Master File. Thus far, several genealogists have been certified under new program.

We are an international organization and rely on **you** to let us know when there is a governmental or repository action that diminishes or enhances access to genealogically relevant records. We also rely on our members helping to support our efforts by joining letter writing/email campaigns at all levels, and by working in coalitions with other interested groups.

The greater the number of people making their voices heard, the greater the chance of success.

IAJGS created a Records Access Alert in 2012. The records access alert is an “announcement” list—hosted by IAJGS—where—at least for the time being—only the list owner may post messages. PRAMC postings address reduced or increased access by a governmental agency or repository of genealogically relevant documents/records. Go to:

<http://lists.iajgs.org/mailman/listinfo/records-access-alerts> and follow the instructions to enter your email address, full name and JGS/JHS/SIG affiliation. You will receive an email response that **you have to reply** to or the subscription will not be finalized.

While this is an announcement list, we do want to hear from list subscribers’ worldwide if they know of public records access issues or have something relevant to add about the postings. Please send notices and comments to the following email address:

RecordsAccess@iajgs.org Where appropriate, the list owner will issue a posting. Alerts posted to this new service will be made only when there is something of an important nature regarding public records access; therefore, do not expect this alert routinely on a daily or weekly basis.

Records Preservation and Access Committee (RPAC)

RPAC is a joint committee of Federation of Genealogical Societies (FGS), The National Genealogical Society (NGS), and IAJGS as sponsoring members. 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. RPAC meets monthly to inform and advise the genealogical community on ensuring proper access to vital records and on supporting strong records preservation policies and practices at the federal, state, and occasionally the local level.

For many years, RPAC made presentations at the FGS, NGS, and IAJGS annual conferences. RPAC maintains a network of state liaisons who are invited to participate in occasional State Liaison conference calls and attend RPAC meetings at the national conferences. State liaisons may also be invited to participate in monthly conference calls when their state is experiencing a threat to records preservation or access.

2011 Revision Model State Vital Statistics Act

Since 1992, many states have enacted legislation based upon the last approved Model State Vital Statistics Act (Model Act) which restricts access to birth records for 100 years and death, marriage, and divorce records for 50 years. A Working Group formed in 2009 to update the Model Act reported out their work as the 2011 Revision in May of 2011, which if passed in your state would embargo live birth records for 125 years, death records for 75 years, and marriage and divorce records for 100 years. No genealogical organizations received an invitation to review or comment on the 2011 Revision.

In the fall of 2011, Oklahoma passed a poorly written law which in effect, has closed access to death records. The genealogical community was not aware of the change until early 2013 when the new Oklahoma regulations were implemented. Senate Bill 1448 in Oklahoma was introduced by the genealogical community to correct the previous law and to make death records available after 25 years and birth records after 100 years. Through the legislative process the bill was amended to include the 2011 Revised Model Vital Statistics Act embargo periods of 125 years for birth records and 75 years for death records. The bill passed at the end of April and was signed by the governor on 30 April. It becomes effective 1 November 2014.

The Department of Health and Human Services (HHS) put the 2011 Revision “on hold” in April 2012. The Department of Health and Human Services was advised that the proposed 2011 Revision Model Act should be made available for public review and comment before it is adopted by any state. In January 2013 HHS, promulgated final regulations on privacy which now permit medical information about a deceased to be released 50 years after the date of death. The inconsistency between Health and Human Service and NAPHSIS is obvious.

In anticipation that the Model Act will be approved in the near future, beginning in 2013 several state vital records officers (Washington, Oregon, and Texas) encouraged bills to be introduced to adopt the 2011 Revised Model State Vital Statistics Act. The genealogical community responded, and the proposed further restrictions to accessing of vital records were defeated except as described below.

Texas: Genealogists responded across the state with a letter writing campaign.

In addition, vital records officers were not able to articulate why death records should be closed more than 50 years. The bill died in committee

Oregon: The 2011 Model Vital Statistics Act passed with no change in the embargo periods. However, indices which were previously readily available, are now restricted for the same embargo period as the records.

Maine: A law restricting access to vital records was passed in 2010. The state has been working for several years on new regulations to implement the law. Genealogists who belong to a genealogical society and obtain a researcher card can have access to the records which are closed to the public. The pending regulations which RPAC and IAJGS are responding to also make the indices more restricted.

RPAC is very concerned that states which adopted the 1992 Model Act, will introduce the 2011 Revision as soon as is politically feasible. We encourage genealogical societies in every state to be on alert for new regulations as well as new legislation and to be proactive by encouraging members to contact their state legislators now and educate them on the importance of family history research before any bills are introduced. Also be sure any communication includes the number of genealogists in your state who belong to local and state genealogical organizations. For additional background on the Model Act, see <http://www.naphsis.org/about/Documents/FinalMODELLAWSeptember72011.pdf>

Genealogists’ Bill of Rights

RPAC adopted a Genealogists Bill of Rights that will be available at the IAJGS conference for individuals to sign. It will also be available on an online signature gathering website. This would accompany letters specific to genealogical access issues in the United States. It is anticipated that other countries will develop similar bills of rights following their countries’ privacy rules.

European Union Proposed Data Privacy Regulation

The European Union proposed to update their Data Privacy Regulation and it has passed their Parliament—one of the two chambers of their bi-cameral Congress. The vote before the Council is not expected until later this summer. The genealogical community is concerned with the potential loss of access to records of genealogical value. The proposed regulation includes provisions to protect the individual’s right to privacy by permitting the individual with the “right to be forgotten” and the “right to erasure”. While IAJGS has been advised that the “intent” of the proposed regulation is to address the records of the living, not the deceased, as the draft regulation must balance the ‘right to be forgotten’ with other fundamental rights such as freedom of expression and research, we are concerned that this may not be the actuality once it

is adopted. In addition the rights of erasure and to be forgotten have negative effects for future genealogists researching those who may be living today but not in the future.

Death Master File-Certification Process for Access

Many of us are used to accessing the Social Security Death Index (SSDI) which is the commercial version of the Death Master File (DMF). With the enactment of the Bipartisan Budget Agreement, P.L. 113-67, which was signed by President Obama on 26 December 2013, and effective as of 26 March 2014, it restricts access to each record listed on the SSDI for three years from the date of death. The Commerce Department was given ninety days to write the regulations for certification of those who need immediate access to the DMF/SSDI because such person has (i) a legitimate fraud prevention interest, or (ii) a legitimate business purpose pursuant to a law, government rule, regulation, or fiduciary duty. The law also restricted the data elements that may be released in the new DMF to: name-first and last only-neither middle initial nor middle name, date of birth, date of death and Social Security Number (SSN). To search the new DMF, the researcher must **know** the SSN, and first and last names of the deceased.

IAJGS along with RPAC, and other members of RPAC, participated in the Department of Commerce's 4 March 2014 request for information meeting and submitted statements by 25 April 2014 for the Interim Final Rule. The genealogical community has continued to submit statements to Congress whenever they discussed the DMF, to no avail. Despite repeated efforts, genealogists who are key stakeholders in the outcome, were never asked to testify.

RPAC, with IAJGS input, have developed a three-pronged approach: We are pursuing certification for forensic genealogists with the Department of Commerce; (2) we are continuing to present evidence to the various congressional committees that tax fraud due to identity theft of the deceased is a problem that has been solved and (3) we proposed technical amendments that will permit forensic genealogists who work in specific areas to be immediately certified, as well as to permit the non-secure data elements previously in the SSDI to be once-again included in the new-DMF until Section 203 is repealed.

Laws, Regulations and Edicts

IAJGS continues to monitor laws, regulations and edicts that are adverse to genealogical interests. The following are several of the issues not previously mentioned above that we are monitoring:

California: Proposition 42, a constitutional amendment which will be on the June 2014 primary ballot, ensures public records access. IAJGS worked with various interested parties to forge an agreement that the local governments would pay the costs of complying with the public records act. Historically, the state had reimbursed local governments.

New York: New York State Chief Justice ordered an edict restricting public access to the records included in probate files. These include documents and procedures involving guardians and custodians, guardians of mentally retarded and developmentally disabled people's death certificates, tax returns, documents containing social security numbers, inventory of assets and firearms inventory.

This handout was submitted on 1 May 2014 as required. As a result, the materials above do not reflect recent changes in state legislatures that are in session until 30 June or later. Updates will be provided in the live presentation.