

MASSACHUSETTS GENEALOGICAL COUNCIL

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FEDERAL LEGISLATION CONCERNING VITAL RECORDS Public Law 108-458

In the Fall 2004 MGC Newsletter, we alerted you to a potential threat concerning access by genealogists to vital records. As a part of the legislative response to the 9/11 Commission Recommendations, the United States House of Representatives prepared bill HR.10. HR.10 Chapter 2 Improved Security for Birth Certificates [see page 5 of this newsletter for a summary of the major points], would have resulted in a significant reduction in access to vital records for family history researchers. The United States Senate also prepared legislation, S.2845, as a result of the 9/11 Commission Recommendations.

The House bill, HR.10, and the Senate bill, S.2845, were crafted with significantly different language regarding the institution of federal law relating to "improved security for birth certificates". This particular section of the legislation is of paramount interest to the entire research community, and especially to the community of genealogists and family historians. HR.10 did in fact enumerate extensive restrictions to the process of providing birth certificates in the states, as well as public access to the "information gathered in the issuance process..." including the stipulation to "subject all persons with access to vital records to appropriate security clearance requirements." These provisions, taken from the original house bill, HR.10, were the subject of our previous alarm that public access to vital records was in jeopardy.

It is important to understand that there were two bills relative to Intelligence and Counter-Terrorism reform in late 2004 (the 108th Congress) HR.10 and S.2845. Both passed in their

IMPORTANT

It has come to our attention that some City and Town Clerks in Massachusetts misunderstand the current state of the law regarding access to birth, marriage and death records. At the current time, no federal or state law has abridged your right to view and transcribe [not photocopy] any marriage or death record. Records of illegitimate births occurring after 1910 are closed. All other birth records are open records.

Proposed legislation would have affected access to these records, but none of these proposals were enacted. Some Clerks appear to have confused proposals with actual law. If you are denied access to vital records, ask the Clerk to check with the Secretary of the Commonwealth to determine the current status of the records. Be courteous to the staff at all times. Their job is hard, and they are trying to assist many people. We want to work with them so that records will remain accessible to genealogical researchers.

Always call ahead to the Clerk's office before you visit to see if it is a good time. Offices may be short-staffed at certain times or hours (ex. lunch). Clerks preparing for a Town Meeting will be less likely to have time to assist your research. Most staff in City and Town Clerk's offices are interested in your research and want to help. Give them a chance. Maybe even an offer of volunteer time?

MGC BOARD 2003-2004

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The Massachusetts Genealogical Council is dedicated to serving the interests of the state's genealogical community. Founded in 1980, the Council's stated aim is to develop and promote the study and exchange of ideas among persons and

organizations interested in the pursuit of genealogy. Its programs and activities are designed to complement those of the many genealogical and hereditary societies throughout the state and to provide a statewide forum for genealogists.

One of the Council's leading functions is to represent the concerns of genealogists in the halls of state and local government. The Council monitors the activities of agencies that bear on genealogical interests and testifies at hearings and other forums of government. The Council promotes the preservation and publication of state and local records and also provides information about them. It guards the rights of all researchers' access to public records and educates genealogists about the proper use and preservation of these records.

The membership year runs from 1 January through 31 December. Beginning in 2005, dues will be: \$10 for an individual; \$15 for an organization; \$15 for a family (same mailing address, 1 newsletter sent for both parties, both eligible for seminar discount). Note: Dues are NOT tax-deductible.

The MGC Board meets four times a year at the National Archives in Waltham. Meetings are open to all interested genealogists, and we welcome your participation. The next Board meeting is scheduled for April 16, 2005, at 1:00 pm.

FEDERAL LEGISLATION CONCERNING VITAL RECORDS (continued from page 1)

respective chambers. Due to substantial differences between the two bills, a Joint Conference Committee met to work out the differences. The result, as far as access to vital records was concerned, was closer to S-2845 which required fewer restrictions on vital records. This compromise bill was also passed in both houses and sent to the President for signature on 12 December 2004. The President signed it into law on 17 December. The result is now known as Public Law 108-458, Intelligence Reform and Terrorism Prevention Act of 2004. The legislative history of each bill and the current law can be obtained at various governmental web sites [including http://thomas.loc.gov; search under "Public Laws"]. The bill itself can be seen in text form. Copies of the bill are also available in the Federal Register which most public libraries should have. The sections of interest to genealogists are those dealing with Birth Certificates. These are now combined in Section 7211 of PL.108-458 [see page 4 of this newsletter for the pertinent points].

The language in the enacted legislation omitted most of the restrictions proposed in HR.10. Instead, the Secretary of Health and Human Services (HHS) now has the responsibility to <u>issue regulations</u> that "shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate to a person who is not the applicant; (and) shall establish standards for the processing of birth certificate applications to prevent fraud." The regulations regarding security for birth certificates will be worked out in the offices of the Department of Health and Human Services. The MGC Board is particularly concerned that HHS may base their regulations on the Model State Vital Statistics Regulations proposal. Last year, an attempt was made to close access to vital records in Massachusetts based on the proposals in the Model. If the Model is used by HHS as the basis for the regulations, it will have a significant and harmful impact on public records in Massachusetts

In order to monitor the status of the proposed regulations, we need to understand the system for drafting federal regulations, the mechanisms of regulation promulgation, the opportunity for public input into the process, and approval of proposals prior to their being enforced. In order to institute federal regulations, HHS must: 1) have the proposed regulations published in the *Federal Register*, 2) ask for public comment (which they have to note but not necessarily follow); and 3) publish the final regulations in the *Federal Register*.

The Massachusetts Genealogical Council is monitoring the issue and organizing a response. We ask that all MGC members alert government officials, and genealogical and historical organizations to the issues involved. We need to make sure that our concerns are addressed in an early state of the rule-making process by working with HHS during the process to formulate the regulations. Federal Executive Order 12866 (Regulatory Planning and Review) requires that: "Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities." The process for creating federal regulations is outlined at The Regulatory Information Service Center website (http://reginfo.gov).

We will continue to monitor this situation closely. MGC is very concerned that regulations intended to protect identity may have the unintended consequences of limiting or closing the opportunity for Americans to research the history of their families. We want our voices to be heard in this process.

¹ The Regulatory Information Service Center has established the REGINFO.GOV site to assist users who want to find information about Federal, state, and local regulation. The Center is a Federal Government office located in the General Services Administration, with responsibility for gathering and publishing information on Federal regulations.

"S.2845.ENR INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004"

(ENROLLED AS AGREED TO OR PASSED BY BOTH HOUSE AND SENATE)

[Editor's Note: these are the principal points of interest. For the full text, go to http://thomas.loc.gov]

SEC. 7211. Minimum Standards for Birth Certificates

- Beginning 2 years after the promulgation of minimum standards..., no Federal agency may
 accept a birth certificate for any official purpose unless the certificate conforms to such
 standards.
- Each State shall certify to the Secretary of Health and Human Services that the State is in compliance with the requirements of this section.
- Certifications ... shall be made at such intervals and in such a manner as the Secretary of Health
 and Human Services, with the concurrence of the Secretary of Homeland Security and the
 Commissioner of Social Security, may prescribe by regulation... Each State shall ensure that units
 of local government and other authorized custodians of records in the State comply with this
 section.
- Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that—
 - (A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper or an alternative, equally secure medium, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;
 - (B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;
 - (C) shall establish standards for the processing of birth certificate applications to prevent fraud;
 - (D) may not require a single design to which birth certificates issued by all States must conform; and
 - (E) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.
- In promulgating the standards required ... the Secretary of Health and Human Services shall consult with—
 - (A) the Secretary of Homeland Security;
 - (B) the Commissioner of Social Security;
 - (C) State vital statistics offices; and
 - (D) other appropriate Federal agencies.
- The Secretary of Health and Human Services, in coordination with the Commissioner of Social Security and other appropriate Federal agencies, shall award grants to States, under criteria established by the Secretary, to assist States in—
 - (i) computerizing their birth and death records;
 - (ii) developing the capability to match birth and death records within each State and among the States; and
 - (iii) noting the fact of death on the birth certificates of deceased persons.

H.R. 10: 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

This is the original version that was passed by the House.

[Editor's Note: these are the principal points of interest. For the full text, go to http://thomas.loc.gov]

CHAPTER 2--IMPROVED SECURITY FOR BIRTH CERTIFICATES

- To meet the requirements of this section, a State shall require and verify the following information from the requestor before issuing an authenticated copy of a birth certificate:
 - (A) The name on the birth certificate.
 - (B) The date and location of the birth.
 - (C) The mother's maiden name.
 - (D) Substantial proof of the requestor's identity.
- To meet the requirements of this section, in the case of a request by a person who is not named on the birth certificate, a State must require the presentation of legal authorization to request the birth certificate before issuance.
- To meet the requirements of this section, a State shall adopt, at a minimum, the following practices in the issuance and administration of birth certificates:
 - (1) Establish and implement minimum building security standards for State and local vital record offices.
 - (2) Restrict public access to birth certificates and information gathered in the issuance process to ensure that access is restricted to entities with which the State has a binding privacy protection agreement.
 - (3) Subject all persons with access to vital records to appropriate security clearance requirements.
 - (4) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance process.
 - (5) Establish and implement internal operating system standards for paper and for electronic systems.
 - (6) Establish a central database that can provide interoperative data exchange with other States and with Federal agencies, subject to privacy restrictions and confirmation of the authority and identity of the requestor.
 - (7) Ensure that birth and death records are matched in a comprehensive and timely manner, and that all electronic birth records and paper birth certificates of decedents are marked `deceased'.
 - (8) Cooperate with the Secretary in the implementation of electronic verification of vital events under section 3065.
- In carrying out subsection (a), the Secretary shall issue regulations to establish a means by which authorized Federal and State agency users with a single interface will be able to generate an electronic query to any participating vital records jurisdiction throughout the Nation to verify the contents of a paper birth certificate. Pursuant to the regulations, an electronic response from the participating vital records jurisdiction as to whether there is a birth record in their database that matches the paper birth certificate will be returned to the user, along with an indication if the matching birth record has been flagged `deceased'. The regulations shall take effect not later than 5 years after the date of enactment of this Act.
- All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, with the concurrence of the Secretary of Health and Human Services and in consultation with State vital statistics offices and appropriate Federal agencies.

CIVIL RECORDS REPORT

MGC Director of Civil Records, Shirley Barnes, Assistant Director of Civil Records, John S. Gracey, and Director of Ways and Means, Sheila FitzPatrick, prepared legislation on vital records issues to be submitted to the Massachusetts General Court for the 2005 session. The legislation was introduced by Senator Pamela Resor and Representative Stephen LeDuc. The bill is 17 pages long. The bullets listed below cover the principal issues of interest.

H3744: AN ACT RELATIVE TO BIRTH, MARRIAGE AND DEATH RECORDS

- Transfer of Older Vital Records to the Archives of the Commonwealth: On January 1, 2007, and upon mutual arrangement by the archivist of the commonwealth and the state registrar for an orderly transfer within three years, all records and adjudications of paternity and indices pertaining to births through December 31, 1925, any amendments to births with indices filed prior to December 31, 1925, records and indices of marriages and deaths filed prior to December 31, 1960, and any amendments including indices to marriages and deaths filed prior to December 31, 1960, then in the custody of the state registrar, shall be transferred to the custody of the archives of the commonwealth. Until such time as the physical transfer occurs, these records and indices remaining at the state registry shall be public records. Subsequently, all records, indices, and amendments of births, adjudications of paternity, marriages and deaths shall be transferred from the state registry to the archives on the basis of five-year increments, consistent with chapter 374 acts of 1983, commencing with January 1, 2011...
- Public Examination of Records: Custodians, upon receipt of a request, shall allow the public examination of vital records and their indices, and the abstraction of information from vital records and their indices except as excluded below. Indices are not to be excluded from examination... Excluded from such examination and issuance of special certified copies are records and returns of births of abnormal sex, and fetal deaths before a gestational period of at least twenty weeks, regardless of the custodian issuing or allowing such examination.
- Establishment of a Special Vital Records and Statistics Committee: There will be a permanent special vital records and statistics committee to oversee the overall improvement including preservation and automation of the vital records and statistics system in the commonwealth, and shall be established no later than January 1, 2007. Physical preservation of the records shall constitute an integral part of any system-wide improvement plan. The permanent special vital records and statistics committee shall oversee and approve expenditures of any funds to pay for improvement. The committee shall consist of 19 members including the State Registrar who shall serve as chairman and the Archivist of the Commonwealth and the Supervisor of Public Records...The committee shall include two town clerks...; two city clerks...; one member each selected by the New England Historic Genealogical Society, the Massachusetts Genealogical Council, the Massachusetts Historical Society, the Massachusetts Newspaper Publishers Association, the Massachusetts Medical Society, the Massachusetts Hospital Association, the Massachusetts Public Health Association, and the Massachusetts Funeral Directors Association. The commissioner of public health shall appoint four additional members...
- Permanent Facility for Vital Records: Notwithstanding any provisions of law to the contrary, provisions for town clerks to forward subsequent original records of birth, death and marriage to the state registry shall not commence until the state registry's arrangements for the storage and maintenance of vital records in a state owned building, including the environmental and physical security needs and provisions for access by researchers to the original documents in a state owned building, meets the requirements of the Supervisor of Public Records relating to storage and maintenance of permanent public records and has been approved by the Supervisor of Public Records.

Editor's Note: Identify Theft is the primary reason given for closing access to vital records to genealogists. As this article shows, ordinary access to vital records by individuals is not the source of this kind of crime.

HUDSON COUNTY, NEW JERSEY: FEDS SHUT DOWN PASSPORT AND BIRTH RECORD SERVICES

Al Sullivan, Reporter senior staff writer 08/08/2004, ©The Hudson Reporter 2004 [From the Newsletter Editor: this article has been edited for space reasons only.]

For the second time in less than a year, Hudson County's [N]] office of vital statistics was closed as part of an investigation dealing with sale or theft of identification. Early on August 3, telephone messages issued to various public officials alerted them that the Hudson County office issuing passports and birth certificates had been closed by the U.S. State Department at the end of the business day on Aug. 2, pending an investigation. "Its closure is indefinite," the message said. "Additionally, no passport acceptance agency will recognize a Hudson County-issued birth record as proof of U.S. Citizenship. Birth records must be requested from the state office of vital statistics. No further comments, due to an ongoing investigation."

Richard Boucher, spokesperson for the State Department, confirmed the closing of the office in a telephone interview, saying that the Department of State has stopped accepting passport applications processed by the Hudson County Clerk's Office, as well as birth certificates issued by the county as proof of citizenship. He said that this was pending the outcome of an ongoing corruption investigation involving the sale of documents. He declined to comment whether this also may be related to a terrorism investigation.

In February, federal agents removed records from the Hudson County office dating back to 1902 as part of a Homeland Security investigation and a probe into a phony passport racket. In 2003, the state attorney general's office indicted 16 people, many residents of

Hudson and Passaic counties in conjunction with supplying false information in order to obtain valid U.S. passports. They were accused of using fictitious names or presenting false documents including birth certificates, Social Security cards, New Jersey Motor Vehicle documents and other government documents. Most of those who included residents from Jersey City, Union City, and other parts of the state, plead guilty and were either deported or sentenced to jail.

Richard Pike, a spokesperson for the U.S. State Department, said the details behind the Aug. 2 closing could not be revealed in detail, partly because of the continued investigation. But he said the State Department is concerned about the accuracy of information used in obtaining the documents. "We cannot rely on the accuracy of the information on the applications that have been submitted to that office," he said. "The Department of State closed this acceptance facility to maintain security of the passport application process. We've also stopped accepting county records as evidence of U.S. citizenship until the investigation is concluded. The investigations developed facts indicating that we cannot rely on the accuracy of information on passport applications that were processed by the County Clerk's office." Although widely reported that the action was not terror-related, other sources said the sale of phony identifications could aid terrorists, as well as people seeking to live or work illegally in the United States. One source inside the U.S. State Department said, "We're giving you two and two. It is up to you to make it add up to four."

IS THERE PRIVACY AFTER DEATH?

By Robert Gellman, Special to GCN [Government Computer News] 08/02/04; Vol. 23 No. 21 Robert Gellman is a Washington privacy and information policy consultant. E-mail him at rgellman@netacc.net.

In March, the Supreme Court decided a Freedom of Information Act case involving photos of Vince Foster, a Clinton White House aide who committed suicide. The principal issue was whether relatives of deceased individuals have a protectable privacy interest. Foster is dead, so his privacy interest was not at stake. Generally under the FOIA, dead people have no protectable privacy interest. But the court did not totally exclude the possibility that a dead individual might have a privacy interest.

Privacy for the dead has a recent precedent. The Health Insurance Portability and Accountability Act provides that the right of privacy in health information lasts beyond death until the end of the universe. That's more than a bit silly. The court held that the FOIA recognizes surviving family members' right to personal privacy with respect to images of a close relative's death scene. This isn't entirely new ground for the FOIA.

A living individual can disclose personal information that would embarrass family members, and the family cannot assert a right of privacy to stop it. Somehow, however, at the instant of death, the family acquires a right of privacy that didn't exist before. I don't buy it. What will the courts do when surviving relatives start suing each other over disclosures about the recently departed? It won't be pretty.

Nevertheless, the result is understandable. The justices may have looked at this case and considered their own circumstances. Change a few facts, and photos of dead justices could be at issue.

Admirably, the court tried to narrow the decision to a surviving family's interest in death scene photos. Even better were statements confirming important FOIA features:

- Citizens generally should not be required to explain why they seek information.
- Requesters need no preconceived idea of the uses the data might serve.
- Information can be used as requesters choose.
- Disclosure does not depend on the identity of the requester.

The restatement of these principles by the court is valuable. The ruling on privacy rights of surviving relatives may be narrow enough to be mostly irrelevant. The part of the opinion that weighed the public interest against those privacy rights might not make a lot of sense, but it is so limited as to be generally harmless. I hope.

Overall, the court didn't do much damage to the FOIA, and it reconfirmed some basic FOIA doctrine. It could have been much worse. We will have to see how agencies expand the ruling. It's already an issue with photos of coffins returning from Iraq.

The Foster ruling may not make that much sense, but I would be happier to see courts go out of their way to support privacy for the records of everyday life, not oddball photos of dead celebrities and political figures.

EDUCATIONAL OPPORTUNITIES

New England Regional Genealogical Conference

DATES: March 31-April 3, 2005

LOCATION: Holiday Inn by the Bay, Portland, Maine

<u>COST</u>: \$99 for the full conference (\$125 for registrations received after 3/1/5); per day rate is \$75 (\$85 after 3/1/5). Meals are extra.

HOTEL ACCOMMODATIONS: Holiday Inn (\$114 single or double). Call 1-800-345-5070 and

identify the NERGC Special Conference Rate WEBSITE: http://www.NERGC.org

Lecture topics: New England Research, Writing and Publishing, Ethnic Genealogy, Skills and Methodology, Technology, DNA, Libraries and Records, and Beyond Basic Federal Records. Speakers include: Dennis Ahern, Robert Charles Anderson, Tony Burroughs, Sandra MacLean Clunies, Pam Eagleson, Dick Eastman, Sandra Goodwin, Bennett Greenspan, Walter V. Hickey, Cyndi Howells, Harlan Jessup, John Konvalinka, Ann S. Lainhart, Michael Leclerc, Patricia Vigeant Locke, Marcia Melnyk, Elizabeth Shown Mills. David Mishkin, Donna Moughty, Joyce S. Pendery, Laura G. Prescott, Diane Rapaport, George F. Sanborn, Craig Scott, Beau Sharbrough, Helen A. Shaw, , Maureen A. Taylor, Michael Tougias, Helen Schatvet Ullmann, Ruth Quigley Wellner and many others.

The National Institute on Genealogical Research (NIGR)

[<u>Editor's Note</u>: NIGR is a week-long intensive course in federal records. It is highly recommended. Several of the MGC Board members have attended. It usually fills up very quickly. Check out the website. If you are interested, get your name on the mailing list. If you want to go, you should send in your registration as soon as they are available.]

<u>DATES</u>: 10-16 July 2005

LOCATION: National Archives in Washington D.C.

<u>COST</u>: Tuition is \$350 for applications postmarked by 15 May, or \$400 thereafter. Scholarships are available.

HOTEL ACCOMMODAATIONS: Information to be provided.

WEBSITE: http://www.rootsweb.com/~natgenin

<u>DESCRIPTION</u>: The institute is an intensive program offering on-site examination of federal records. Designed for experienced researchers, it is not an introduction to genealogy. The 2005 program will focus on immigration, military, land, cartographic, passport, African American, and Native American records, and more. One day at the National Archives site in College Park, Maryland, and optional evening sessions at the Library of Congress and the DAR library are included.

Enrollment is limited, and the class fills very quickly. Application brochures will be mailed in February 2005. To add your name to the institute¹s mail list, and to get additional information about the program, see the Web site. You may also request that your name be added to the mail list by sending an e-mail to NatInsGen@juno.com, or write to NIGR, P.O. Box 724, Lanham, MD 20703-0724.

NIGR has been an independent, non-profit corporation and leader in genealogical education since 1989. Trustees consists of representatives of the American Society of Genealogists, Association of Professional Genealogists, Board for Certification of Genealogists, Federation of Genealogical Societies, National Genealogical Society, and the institute's alumni association. The National Archives, a non-voting member, provides strong support.

Massachusetts Genealogical Council P.O. Box 5393, Cochituate, MA 01778-5393

Newsletter: If you have information, notices, etc., that you would like included in the MGC Newsletter, please send them to the Newsletter Editor, Massachusetts Genealogical Council, P.O. Box 5393, Cochituate, MA 01778-5393 or email editor@massgencouncil.org. If you receive a copy of the newsletter with fewer than 10 pages, let us know and we will send it again. Sometimes the newsletters suffer in the mailing process.

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MEMBERSHIP RENEWAL: This issue of the MGC Newsletter includes your annual membership renewal form. Our ability to serve as an advocate for genealogists in Massachusetts is based on the strength and size of our membership. Your membership is important to us. Thank you for your support.

SAVE THE DATE! Saturday, July 30, 2005 MGC ANNUAL MEETING AND SEMINAR

MGC is very pleased to announce that the Educational Seminar in 2005 will be jointly sponsored with the National Archives and Records Administration. The seminar will be held at the Verizon Conference Center in Marlborough. It is located off 495, north of the MassPike and south of 290. It is a lovely facility and very easy to find. There is a hotel on the property for those wishing to spend the night. Refreshments will be provided during the day, and a buffet lunch will be served. The program planning committee personally visited the site and taste-tested the lunch. We guarantee that you will be pleased.

Diane LeBlanc, Regional Administrator for the National Archives and Records Administration – Northeast Region, will give the keynote address and will host a panel discussion on NARA. The panel will solicit comments and questions including *What's happening at NARA*, *What do users want* and *Where should we go from here*. Participants will include NARA staff from Boston and Pittsfield, and possibly New York City and Washington, D.C.

There will be three tracks of lectures. Presentations include: How to Find Information on People and Places in Federal Records; Archival Research Strategies and Techniques; Records of the U.S. Customs Service; Beyond Names and Ages: Clues in the Census; Using Federal Records for Local History Research; Federal Court Records; Immigrant Ancestors; and Military Records.

Registration information and complete details will be in the next newsletter. Watch for it!