

ACCESS TO RECORDS IN MASSACHUSETTS

By Mary Ellen Grogan

One of the primary purposes of the MGC is to “guard the rights of all researchers’ access to public records...” This is an ongoing issue of concern as our President has pointed out in his column, *Transitions in this New Century*.

Researchers in Canada, Australia, California and Texas have all experienced problems with closure of records. The federal Bureau of Land Management website, with extensive current and historical information about land ownership and use in the United States, has been unavailable for months as the result of a court order intended to protect the privacy and accuracy of Indian Affairs records held by the Department of the Interior. Even in Massachusetts, researchers and record holders are unsure of the law concerning access to records in Massachusetts, and the rules and regulations governing that access.

On January 30, 2002, a day-long seminar was held in Boston entitled *What You Need to Know About Public Records and Open Meeting in Massachusetts*. The MGC Board decided to send a representative so that we could have a member with some information on the legal basis of access to records. This column, which intends to pass on that information, is going to be a continuing part of the MGC Newsletter. To research Massachusetts laws, see <http://www.state.ma.us/legis/gcsearch.htm>

Essentially, public records law in Massachusetts assumes that any person has the right to obtain public information.

Massachusetts General Laws (MGL), Chapter 66: Public Records, Section 10, (a)

Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision,...
(To be continued in the Spring 2002 issue)

MGL, Chapter 4, Section 7, Subsection 26:

"Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit...
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy...;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency...;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal...;
- (f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials...;
- (g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy...;
- (h) proposals and bids to enter into any contract or agreement until the time for the opening of bids...;
- (i) appraisals of real property acquired or to be acquired...;
- (j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms...;
- [There is no subclause (k).]
- (l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test...;
- (m) contracts for hospital or related health care services...

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

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By Mary Ellen Grogan

Continued from MGC Newsletter Winter 2002

Essentially, public records law in Massachusetts assumes that any person has the right to obtain public information. There are exceptions, but they are limited

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(d) *The clerk of every city or town shall post, in a conspicuous place in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.*

From the point of view of the researcher, it is important to recognize that every record has a "custodian" – the employee who in the normal course of his/her duties has access to or control of those public records. You must identify the correct custodian before you can successfully locate the records that you want to see. For example, school records will probably be found at the School Department headquarters, rather than in the office of the City/Town Clerk.

The custodian, who could be an administrative staff member or a part-time employee, may not be fully aware of the law regarding public records access. If they are concerned about the validity of your request, ask to speak to another official. Do not be belligerent or demanding.

Tell the official that you believe the document to be a public record and that you would like to review it. You may put your request in writing, but that is not required by law.

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You do not have to identify a specific record (ex. marriage of Michael Connor to Katherine Blake in May 1875). The regulations only require “a reasonable description of the requested record to the custodian so that he or she can identify and locate it promptly.” In the example, you could request to view marriage records between 1870 and 1880.

A custodian may not require either proof of the requestor's identity or the reason for the record request. However, it is to the benefit of all genealogists that we work cooperatively with the record keepers to maintain and protect public records.

(To be continued in MGC Newsletter Summer 2002)

**CHAPTER 46. RETURN AND
REGISTRY OF BIRTHS, MARRIAGES
AND DEATHS.**

**Section 2A. Disclosure of information about
vital statistics; conditions.**

Section 2A. Examination of records and returns of children born out of wedlock or abnormal sex births, or fetal deaths, or of the notices of intention of marriage and marriage records in cases where a physician's certificate has been filed under the provisions of section twenty A of chapter two hundred and seven, or those of persons born out of wedlock, or of copies of such records in the department of public health, shall not be permitted except upon proper judicial order, or upon request of a person seeking his own birth or marriage record, or his attorney, parent, guardian, or conservator, or a person whose official duties, in the opinion of the town clerk or the commissioner of public health, as the case may be, entitle him to the information contained therein, nor shall certified copies thereof be furnished except upon such order, or the request of such person. The provisions of this section shall not apply to such records, returns or notices recorded or filed prior to January first, eighteen hundred and forty-one or to such copies thereof.

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By Mary Ellen Grogan, Newsletter Editor

In Massachusetts, access to records is governed by statute (laws passed by the legislature), by regulation (which detail the procedures for accessing records and are set by the department responsible for the records), and by court decisions. Finding the correct information regarding access can be difficult. The Registry of Vital Records, which maintains birth, marriage and death records in Massachusetts, has a very good website. They have taken the trouble to detail their "Access Policy for Massachusetts Vital Records". They cite the legislation governing access to these records, and provide the appropriate links. The Registry site makes the actual statute language clear by breaking out the details in bulleted lists. The Registry should be congratulated for their efforts. The website is: <http://www.state.ma.us/dph/bhsr/vr/vraccess.htm>. The policy (below) is copied from the Registry website.

ACCESS POLICY FOR MASSACHUSETTS VITAL RECORDS

Access to restricted birth and marriage records are limited by §2A, Chapter 46, M.G.L. For those persons with access to restricted records, proof of identity (a photo ID) is necessary, and in some cases additional documentation is also necessary. Access to persons other than listed below requires a court order.

For Internet, FAX, or Telephone Orders you will need to additionally FAX a copy of the ID to the following number: (617) 825-7755. For mail orders, include your ID and documentation (if necessary) with your order form. Please provide information on your FAX as to when and how your order was placed.

MGL, Chapter 4, Section 7, Subsection 26:

"Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
 - (b) related solely to internal personnel rules and practices of the government unit...
 - (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy...;
 - (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency...;
 - (e) notebooks and other materials prepared by an employee of the commonwealth which are personal...;
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 - (h) proposals and bids to enter into any contract or agreement until the time for the opening of bids...;
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- (l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test...;
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Out-of-Wedlock Births: Access to non-marital (out-of-wedlock) births is limited by §2A, Chapter 46, M.G.L. to the following:

- * Subject of the record (child)
- * Parents listed on the record
- * Father not listed on the record with documentary proof that he is the father (such as a paternity adjudication, stipulation or properly completed Voluntary Acknowledgment of Parentage)
- * Legal guardian of the child
- * Legal representative of the child

Marriages of Persons Born Out-of-Wedlock: Access to marriage certificates when the bride or groom was born out-of-wedlock is limited by §2A, Chapter 46, M.G.L. to the following:

- * Bride or groom
- * Legal representative of the bride or groom
- * Parent or guardian of the bride or groom

***RECORDS OF THE GOVERNOR & COMPANY OF THE
MASSACHUSETTS BAY IN NEW ENGLAND¹:
Orders Relating to Registration***

In order to give us all a little background on the history of birth, marriage and death records in Massachusetts, I have copied the sections indexed as "Registration" in Shurtleff's *Records of the Governor & Company of the Massachusetts Bay in New England*. This is not a transcription of the records as they are printed. In order to make the information easily accessible, I have used modern spelling. All other wording and punctuation is as it appears in the printed volume. *Mary Ellen Grogan*

4 September 1639²

Whereas many judgments have been given in our Courts, whereof no records are kept of the evidence and reasons whereupon the verdict & judgment did pass, the records whereof being duly entered & kept would be of good use for precedent to posterity, & a relief to such as shall have just cause to have their causes reheard & reviewed, it is therefore by this Court ordered & decreed that henceforward every judgment with all the evidence, be recorded in a book, to be kept to posterity.

Item: That there be records kept of all wills, administrations & inventories, as also of the days of every marriage, birth & death of every person within this jurisdiction.

Item: To record all mens' houses & lands, being certified under the hands of the men of every town, deputed for the ordering of their affairs.

Imprimus: for every judgment at the Court of Boston, 6 pence

Item: The entry of every will, administration, or inventory, if it exceeds not a page, 6 pence

For receiving the book of mens' houses & lands from the town, 2 shillings 6 pence

For every death 1 pence, for every birth 1 pence; the same to be certified once every year, at the time of the General Court, the same party bringing the certificates to pay the fees unto the recorder for entry of the same, and such towns to be fined 40 shillings as shall fail to send up their certificates.

14 June 1640³

Whereas, at the General Court the 4th day of the 7th month 1639⁴ there was provision made for the recording of several particulars, amongst which it is observed that births, deaths & marriages are much neglected in many towns,-

It is therefore ordered, that hereafter the clerks of the writs⁵ in several towns shall take especially care to record all births & deaths of persons in their towns; & for every birth & death they so record they are

¹ Nathaniel B. Shurtleff, M.D., ed., *Records of the Governor & Company of the Massachusetts Bay in New England*, (Boston: Press of William White, 1854)

² Ibid., v. 1, 275

³ Ibid., v. 2, 15

⁴ Editor's Note: Don't forget the Calendar change! The new year began on March 25th, so the 7th month in 1639 was September.

⁵ Definition of Clerks of the Writ: "It is ordered, that in every town one shall be appointed to grant summons & attachments in all civil actions;...These have power to send out pecces [sic] to any towns, & to be called clerks of the writs. These are chosen for a year, & till new be chosen..." Ibid., v. 1, 344

to have allowed them the sum of 3 pence, & are to deliver in yearly to the Recorder of the Court belonging to the jurisdiction where they live a transcript thereof, together with so many pence as there are births & deaths recorded, & this under the penalty of 20 shillings for every neglect; & for time past it is ordered, they shall do their utmost endeavor to find out in their several towns who have been born, & who has died, since the first founding of their towns, & to record the same as aforesaid.

Also the magistrates & other persons appointed to marry shall yearly deliver to the recorder of the Court that is nearest to the place of their habitation the names of such persons as they have married, with the days, month, and years of the same; & the said recorders are faithfully & carefully to enroll such births, deaths & marriages as shall thus be committed to their trust.

7 March 1644⁶

Whereas the order for the recording of deaths, births, & marriages is very useful & necessary, & yet it hath been in many places much neglected, it is ordered, that all parents, masters of servants, executors, & administrators respectively, shall stand charged to bring into the clerks of the writs the names of such, belonging to the, or any of them, as shall either be born or die, & that the new married men shall stand likewise bound to bring in a certificate of his marriage, under the hand of the magistrate which married him, to the clerks of the writs, who shall, under the penalty of twenty shillings, bring a certificate under his hand, with a penny a name, as well for the recorder of marriages as the rest; & for each neglect the person to whom it doth belong shall forfeit as follows, viz.: If any person shall neglect to bring in a note, or certificate, as aforesaid, together with 3 pence a name, to the said clerk of the writs, to be recorded above one month after such birth, death or marriage, he shall then pay 6 pence to the said clerk; if he neglect 2 months, 12 pence; if 3 months, 5 shillings; which forfeits shall be returned into the Treasury; also, we think it were meet the grand juries were minded to present such defaulters as they take notice of against the intent of this order.

11 November 1647⁷

To the end all records, wills, births, letters, & other instruments which are of special public concernment, may be safely preserved & impved [sic] for the good of present and succeeding ages, it is ordered by the Court, & the authority thereof, that forthwith there be, by direction of the auditor general, a strong press made... [*Editor's Note: this entry continues with detailed instructions concerning the construction of this chest, the number of locks, and which officials should hold the keys to those locks. It is clearly evident that the safety and preservation of these records for future use was important to the founders of the Commonwealth.*]

6 May 1657⁸

[*Editor's Note: volume 3 covers the records of the House of Deputies, which had a similar function to that of the modern House of Representatives. The second entry for 6 May 1657 appears to be the final version of the official and approved order for the Colony Records. The primary difference appears to be in the amount of the fine applied to noncompliant clerks of the writs.*]

This Court, taking into the consideration the great damage that will unavoidably accrue to the posterity of this commonwealth by the general neglect of observing the law enjoining records of all births, deaths, etc. do therefore order, that henceforth the clerk of the writs in each town respectively take due care for effecting the same, according to the intent of the aforesaid law; & in case any person shall neglect their duty required by the said law then one month after any birth, death, or marriage, the clerk of the writs shall demand the same, with 12 pence a name for his care & pains; & in case any shall refuse to satisfy him, he shall then return the name of such person or

⁶ Ibid., v. 2, 59

⁷ Ibid., v. 2, 208

⁸ Ibid., v. 3, 426

persons to the next magistrate or commissioner of the town where such person dwells, who shall send for that party so refusing, & in case he shall still persist therein, shall give order to the constable to levy the same; & if any clerk of the writ shall neglect his duty hereby enjoined, he shall pay the following penalty, viz: for neglect of a year return to the County Court, 5 shillings; & for neglecting to return the name of any person returnable by this law, ether born, married, or dead, more than 30 days before his return to the County Court, 5 shillings. An that no future neglect may be herein, the recorder of each County Court is hereby enjoined from time to time to certify the County Courts, respectively, the names of all such clerks as shall neglect to make their yearly returns according tot his law, who, upon notice given, shall send for such clerk, & deal in the case according as law requires.

6 May 1657⁹

This Court, taking into their consideration the great damage that will unavoidably accrue to the posterity of this commonwealth by the general neglect of observing the law enjoining a record of all births, deaths & marriages within this colony, do therefore order, that henceforth the clerks of the writs in each town respectively take due care for effecting the same according to the intent of the aforesaid law: and in case any person or persons shall neglect their duty required by the said law more than 1 month after any birth, death, or marriage, the clerk of the writs shall demand the same, with 12 pence a name for his care and pains; and in case any shall refuse to satisfy him, he shall then return the names of such person or persons to the next magistrate or commissioner of the town where such person dwell, who shall send for the party so refusing, and in case he shall persist therein, shall give order to the constable to levy the same. And if any clerk of the writs shall neglect his duty hereby enjoined him, he shall pay the following penalty; i.e., for neglect of a yearly return to the County Court, 5 pounds, and for neglect of returning the name of any person returnable by this law, whether born, married, or dead, more than 30 days before his return to the County Court, 5 shillings. And that no future neglect may be herein, the recorder of each County Court is hereby enjoined from time to time to certify the County Courts respectively the names of all such clerks as shall neglect to make their yearly return according to the law, who upon notice given, shall send for such clerk, and deal in the case according as law requires.

⁹ Ibid., v. 4 pt. 1, 290