

CROSSROADS

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SLIG 2018 Highlights and Annual UGA Awards Banquet

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— David Ouimette, CG, CGL

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Tired of the glazed look non-genealogist family members adopt when you start to talk about your research? Our existing chapters provide a unique opportunity to network with other genealogists whose passion for family history matches your own. If there is not an active chapter in your area we would love to help you start one.

The following locations are being considered for new UGA chapters. Please contact us at info@ugagenealogy.org if you are interested in joining and especially leading any of the following chapters:

- UTAH VALLEY
- SALT LAKE CITY

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ACTIVE UGA CHAPTERS

SALT LAKE VALLEY CHAPTER

Zachary Hamilton — President

Meeting time: to be determined

UGA members residing in Salt Lake County and Tooele will receive an email from the new Chapter President.

Please check the UGA website homepage for more information.

OGDEN CHAPTER

LeAnn Carreola — President

Meets at the Ogden Regional Family History Center

529 24th Street, Ogden, UT

VIRTUAL CHAPTER

Don Snow — Organizer and facilitator

Please check the UGA website homepage for more information.

DNA SIG

Stephanie Saylor — Organizer and facilitator

Please check the UGA website homepage for more information.

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Author Submissions: Submit manuscripts to the *Crossroads* editorial office by e-mail to Gena Philibert-Ortega at genaortega@gmail.com. Text should follow the *Chicago Manual of Style* (16th edition, humanities form); footnotes should follow Elizabeth Shown Mills, *Evidence Explained: Citing History Sources from Artifacts to Cyberspace*, (Genealogical Publishing Company, Inc., 2007). Feature articles should be between 1,500 - 5,000 words. Accompanying images are preferred.

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Orders for *Crossroads*: *Crossroads* is the official magazine of the Utah Genealogical Association. To receive the quarterly magazine simply join the Utah Genealogical Association at www.ugagenealogy.org. Orders for additional copies may be made from our website: www.ugagenealogy.org.

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The Open DEATH RECORDS INITIATIVE

2018 Salt Lake Institute Colloquium

by Frederick E. Moss, JD, LL.M.

Forward

I serve as the legal advisor to the Federation of Genealogical Societies and as a member of the Records Preservation and Access Committee (RPAC), a joint committee of FGS, the National Genealogical Society (NGS), and the International Association of Jewish Genealogical Societies (IAJGS). Although I intend to be supportive of the positions taken by RPAC and its sponsoring organizations, this paper is offered entirely in my individual capacity.

As this paper is being submitted in early March, these issues are likely to experience significant movement before this paper is scheduled for publication this summer. For additional information on this and other late-breaking developments please consult the blog of the Records Preservation and Access Committee (RPAC) at <http://www.fgs.org/rpac>.

I. Introduction

We live in a world of “Big Data” in which more and more information is being created, digitized, and made available on the internet. It is now possible to use that data in previously unimaginable ways to extract knowledge and information. We love it. We depend upon it. It is driving our economy. But we also worry about the privacy, civil liberties, and democratic implications of these developments.

Genealogy operates at the cutting edge of these concerns. It is a data dependent and increasingly an internet dependent exercise.

As a society, we have barely begun to even ask the right questions, much less agree upon the answers. What information should be kept public? Which private? What are the rules to be? How are those rules to be developed? Our message today is that an enduring resolution of these questions can best be achieved by a process that includes a searching dialogue among the subjects of the data, those who create, aggregate or maintain the data, and those who might use the data for a variety of legitimate purposes.

The interests of genealogists are not hard to understand. The pivotal issue for genealogists is access to the records upon which we rely. Without documentation, our family histories quickly become more legend than history. We are truly a “Community of Records.”¹

Although we are occasionally accused of that being our only concern, family historians share the same vulnerabilities to identity theft and concerns about privacy as any other citizen. Be assured that the genealogical community is prepared to be supportive of measures that actually protect us from identity theft.

Although we share these concerns, there is an additional one that sets us apart: We must frequently deal with proposals that have the effect of limiting our access while making us more vulnerable rather than less so. I fervently wish that various proposals

¹ Elizabeth Yakel & Deborah A. Torres, Genealogists as a “Community of Records” (The American Archivist, Vol. 70 (Spring/Summer 2007): 93-113.

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at the state or federal level limiting access to death records would have the effect of identity theft prevention.

The thesis of this paper is that closing death records is likely to do more harm than good. As real data has become available, our analysis has suggested that such measures limit records access for legitimate users without providing the desired benefit of identity theft reduction.

II. The Threat

The threat of identity theft has prompted over a thousand legislative proposals at the Federal, state or local level in recent years, impacting access to vital records. The vast majority of these proposals have had the effect of limiting that access for genealogical and other purposes. The rationale used to justify most of these measures suggests an almost reflexive belief that the best or only way to prevent the fraudulent use of such data by identity thieves is to close the records thieves might have used. This logic carries with it the unstated assumption that no harm or costs result from closing such records.

We cannot expect data breaches (the majority of which involve eventual identity theft) to be dramatically reduced in the foreseeable future. The level of publically disclosed data breaches in recent years is already substantial and growing. Gemalto, a global digital security company, analyses such data and publishes a Breach Level Index. Their 2016 report is found at: <http://breachlevelindex.com/assets/BLI-ebook-2016/Breach-Level-Index-Report-2016-Gemalto.html#p=1>. Legislators and other decision-makers will be under significant pressure to “do something” to prevent identity theft.

Thus, we should anticipate seeing many more proposals to close vital records and other records needed to document medical, economic, and family history conclusions.

III. Two Efforts to Close Death Records

a. Social Security Administration – Death Master File

The most dramatic example of records closure at the Federal level is found in those provisions in Section 203 of the Bipartisan Budget Act of 2013 limiting access to and the content of the Social Security Administration’s Death Master File (DMF). The context prompting these provisions arose in 2011 from particularly egregious cases of tax fraud by identity theft involving recently deceased children. Early House and Senate hearings highlighting these horror stories involved a narrative which injected additional elements in what was to become the operative legislative paradigm. See Section IV of this paper for a discussion of the rationale justifying “identity theft prevention” measures. This closure initiative is the subject of the Case Study reported in some detail in Section V below.

b. Model State Vital Statistics Act

The complete text of the 2011 version of the Model Act is available at the National Association for Public Health Statistics and Information Systems (NAPHSIS) website at <https://www.naphsis.org/>.

Of particular interest to us are those provisions found in Section 27 of the Act which would limit access to birth records for a period of 125 years after a live birth, 75 years after the date of death, or 100 years after the date of marriage or divorce.

Although the adoption of these embargo provisions have been proposed on a number of occasions, these provisions have rarely been adopted by the jurisdictions in which they have been proposed. The genealogical community has been compelled to oppose their adoption.

IV. The 2011 Narrative

As these issues came to public and congressional attention in 2011, no one really knew what we were dealing with since it would take over a year after a fraudulent income tax return was filed before a determination could be made of its fraudulent

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status. In the absence of data, speculation became the order of the day.

What your legislators heard can be summarized as follows:

1. The DMF/SSDI was a substantial source of SSNs used in filing fraudulent tax returns.
2. SSNs of deceased individuals need to be protected in the same ways we safeguard those of the living.
3. Simple fix – Just limit access to DMF
4. Unstated assumption: Nothing would be lost by closing this resource.
5. Unspecified Assertion: Alternative sources exist for DMF data.

Details providing a basis for this summary are reflected in the video recorded at RootsTech 2016 entitled “Closing Death Records: Silver Bullet or Dead End?” (<https://www.rootstech.org/videos/fred-moss/>)

Clips from hearings held as these issues were becoming the subject of Congressional attention in 2012 give some context to the speculations upon which the narrative was based. A clip of the testimony of the grieving father of a child whose identity was compromised by identity thieves filing a fraudulent IRS refund claim begins near the 15 minute point in my video presentation. Commissioner Astrue’s testimony asserting the existence of alternative sources of DMF data begins near 22:30 minutes.

This narrative was to become the operative legislative paradigm underlying almost all of the legislative proposals submitted since 2011.

Only as data has become available in recent years can we determine that not one element of this paradigm is actually supported by reality.

V. The Case Study and Results

This DMF situation has presented a unique opportunity to gather data exploring the effectiveness of alternative measures intended to fight identity

theft. The most optimistic among us might even suggest that those proposing to close death records at the Federal level may have done us a favor by creating this opportunity to subject this issue to analysis using real data that has subsequently become available rather than acting upon ill-informed speculation. The robust notice and comment process employed by the Department of Commerce in implementing their statutory mandate has provided a forum for gathering actual impact information. Other participants clearly represent legitimate historical users of the death master file and may well become allies in our efforts to revisit the wisdom of this approach. (<https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=DOC-2014-0001>)

As data has become available, I have generated a series of blog posts on the Records Preservation and Access Committee blog sharing conclusions that can be drawn from an analysis of that information. Among these posts include: Death Master File — Impact of IRS Filters TY2010, TY2011, TY2012, TY2013 (8 January , 2016), Death Master File — Analysis — IRS Filters Really Work! (13 January 2016), Closing Death Records Is Just Dead Wrong! (28 October 2016), Closing Death Records — The Logical Flaw (12 November 2016), Death Master File — The Final Rule (28 Nov 2016), DMF — How Did The Congress Get So Far Off Track? (21 February 2017). These blog posts can be found at <http://www.fgs.org/rpac/>.

VI. The Needed Paradigm Shift

Before we can hope to achieve an enduring solution to the proper role of death data, I assert that decision-makers will have to recognize and restore the traditionally recognized distinction between the active Personally Identifiable Information (PII) of living persons from the historical [or “burned”] no longer usable information pertaining to the deceased.

The need for a major educational effort on our part has been clearly demonstrated.

Our thesis today is that an enduring resolution of

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these questions can best be achieved by a process that includes a substantive dialogue among the subjects of the data, those who create, aggregate or maintain the data, and those who might use the data for a variety of legitimate purposes.

VII. The Open Death Records Initiative

a. Involvement with Congressional Hearings

Over the years, we have monitored Congressional hearings and other proceedings on topics of interest to us, occasionally testified as invited, and provided Statements for the Record in a number of selected hearings. A few are found in the links to RPAC Blog posts that follows. A more complete list can be found by reviewing all such posts on the blog dating back to 2007.

<http://www.fgs.org/rpac/2010/02/22/library-of-michigan-the-threat-continues/>

<http://www.fgs.org/rpac/2011/12/18/access-to-virginia-vital-records-results-of-22-nov-joint-commission-meeting/>

<http://www.fgs.org/rpac/2012/01/28/ssdi-house-ways-means-committee-hearing-2-february-2012/>

<http://www.fgs.org/rpac/2012/02/19/submissions-for-the-record-social-security-subcommittee-of-house-ways-means-2-feb-hearing/>

<http://www.fgs.org/rpac/2011/10/21/alert-pending-revision-of-the-model-state-vital-statistics-act/>

<http://www.fgs.org/rpac/2013/05/05/senate-finance-committee-16-april-hearing-update-pending/>

<http://www.fgs.org/rpac/2014/01/29/senate-finance-committee-tax-administration-discussion-drafts/>

<http://www.fgs.org/rpac/2013/12/22/death-master-file-ssdi-comes-out-of-obscurity/>

<http://www.fgs.org/rpac/2014/04/28/commerce-certification-program-request-for-information-public-hearing/>

<http://www.fgs.org/rpac/2016/03/22/senate-finance-committee-10-february-2016-hearing/>

b. Outreach to Vital Records Community [NAPHSIS]

Recognizing the interest shared by our two communities, several of us associated with RPAC have sought to open a dialogue with key personnel with the National Public Health Statistics and Information Systems (NAPHSIS) several years ago. This past year we launched a campaign encouraging leaders of State and large local genealogical societies to reach out to their counterpart Vital Records Registrars. A one-page information paper describing this initiative is found as the third item in the Blog post at: <http://www.fgs.org/rpac/2017/07/16/fgs-webinar-the-open-death-records-initiative/>

c. Involve Other Allies

If a window of opportunity presents itself (or we can help create an interest) that suggests that the Congress is willing to revisit the proper role of the Death Master File, we will seek to have other interested parties and legitimate historical users of the DMF join us in an effort to educate decision-makers as to appropriate uses of this resource and the harm done by limiting its use. Ninety possible allies were participants in the robust notice and comment process followed by the Department of Commerce in implementing the provisions of the Bipartisan Budget Act of 2013.

VIII. DMF Alternative? NAPHSIS EVVE Fact of Death

As part of a substantive dialogue we expect to have between the vital records and genealogical communities, we hope to consider what might

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be necessary for a project such as the National Association for Public Health Statistics (NAPHSIS) Electronic Verification of Vital Events (EVVE) Fact of Death product to become the long promised alternative to the Death Master File. (<https://www.naphsis.org/evve-fod>).

If fully and properly implemented, I believe that this resource has the potential of becoming that long-promised alternative to the Social Security Administration's Death Master File and addressing many of the DMF's shortcomings.

IX. Conclusions

Wrestling with these issues develops a new awareness of the myriad uses of death data and some appreciation for the surprising large number of legitimate historical users of resources such as the Death Master File. One quickly appreciates that genealogists are far from the only (or even the most significant) category of users.

The need for a list of deceased individuals that is comprehensive, timely and economically available has been clearly demonstrated.

Clearly the pre-2011 version of the DMF was the best available such resource for a number of years. Those measures taken in 2011 and 2013 limiting access to and the content of the DMF have reduced the utility of that resource. Dismantling that resource could be said to represent an existential threat to the integrity of all those medical, economic and family history disciplines relying upon such data.

If these measures were intended to prevent identity theft, their effect is to make us more vulnerable.

If the real purpose was to incrementally get the Social Security Administration out of the business of publishing a publically available DMF, the legislative measures limiting access to and the content of the DMF were perfectly designed to do so.

Our message has become:

1. In commending the IRS for the effectiveness of the filters they have developed in an effort to thwart tax fraud by identity theft, perhaps the major point is that by so doing the IRS had already accomplished any possible benefit that might have been accomplished by the limitations on access to and content of the Death Master File provided by Section 203 of the Bipartisan Budget Act of 2013 even before it was signed in late December 2013. All that remained was the burden placed upon legitimate users of this resource.
2. None of the elements of the 2011 Paradigm are supported by a factual analysis now made possible by data made publically available since 2011.
3. Preliminary results suggest closure of death records does much more harm than good. It may even make us more vulnerable to identity thieves rather than less so.
4. An enduring solution to the proper role of Death Data in the future will require decision-makers to once again distinguish between the active Personally Identifiable Information (PII) of the living from that of the deceased.

Dare I say that "Genealogists would rather be thought of as a resource and a stakeholder rather than a mere constituency to be placated . . . or safely ignored?"

My special thanks to my RPAC colleagues with whom we have sought to represent the interests of the genealogical community in this arena for the last twenty years. Your corrections and suggestions will be welcomed. Please share by email to fmo839@airmail.net.



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