

**The Closure of Locally Recorded Veterans' Records:
The Impact of Fear, the Internet, and Lobbying
On County Records Management**

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May 2008

In 2002, organized American veterans and their political allies began an intense national lobbying campaign to close military service records long recorded at the county level. Fueled by reports of potential identity theft circulating on the Internet, and in military and veterans' publications, the nationwide campaign proved very effective.¹ As a result, millions of individual military records previously open and accessible to the public at the county level were effectively closed by changes in state and local policy. Over the next three years, most states passed legislation specifically restricting access to veterans' records recorded by counties.

Perceived threats, and a few actual incidents, were widely reported. For example, the *Akron Beacon Journal* (Ohio) reported that a state investigation found that allegations that a "Pittsburgh company sent Ohio veterans records to India" were false.² Many of the reports were repeated in several military service and veterans' publications, then found their way into the newsletters of politicians, organizations, and government agencies. A short article on "stolen identities" was published in the *American Legion* magazine in April 2000. The author warned veterans that "if the intended victim is a veteran, crooks might simply go to a county court-house."³

Readers of the *Legion* article were warned that some counties put veterans' records on the Internet along with other public documents. That warning, with good cause, was being repeated two years later.⁴ For example, the website of the Clerk of Court of Lee County, Florida continues to say that records filed in that office "prior to the effective date of Florida Statute 119.07 [enacted in 2007] will continue to be displayed on the Internet website unless a written request for removal has been presented to the Clerk." Statute 119.07 modified a previous Florida law that required "that images of County Official Records be published on the Internet by 2006."⁵ Similar provisions may be in effect in other states.

¹ Federation of Genealogical Societies and National Genealogical Society, "Records Preservation and Access. Texas—Current Issues, Opinions." <http://www.fgs.org/rpa/TxCurrent.htm> (accessed Mar. 19, 2008). This source contains specific links to stories and articles of the period.

² "Veterans' Data Secure, Report Says," NewsLibrary.com, http://nl.newsbank.com/nl-search/we/Archives?p_product=AK&s_site=ohio&p_multi=AK (accessed Mar. 19, 2008).

³ Gary Turback, "Stolen Identities: The Nation's fastest growing crime puts all Americans at risk especially military personnel and veterans," *American Legion*, April, 2000, 40-41.

⁴ *Ibid*; "Press Release." "Veterans Warned Against Possible Identity Fraud." Jan. 23, 2002, Okaloosa County, Florida, http://www.co.okaloosa.fl.us/veteran_identity_fraud.pdf (accessed April 15, 2008).

⁵ Lee County Clerk of Court, "Notice Effective Immediately," Lee County Florida, <http://www.leeclerk.org/SearchOfficialRecords.htm> (accessed March 19, 2008). Florida Senate, "The 2007 Florida Statutes," State of Florida, http://www.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0119/Sec07.htm (accessed March 19, 2008).

In January 2002 the Army News Service reported that "Identity theft is the fastest growing crime today..." with 600,000 to 700,000 cases reported to the Federal Trade Commission in 2000. Veterans were particular targets according to the Army News Service.⁶ That report, further disseminated by *Army Echoes* (the Army publication produced for retired soldiers) is often mentioned as the spark that set off the drive to close veterans' records in county government offices and records centers.⁷ Its influence was widely felt and it is one of the most cited justifications for the closure or restricting of local veterans' records.

At its June, 2002 Annual Conference, the National Association of County Veterans Service Officers (NACVSO) resolved to support "a requirement for all states' laws to protect the privacy of their veterans' military discharge documents and the information contained in [them] on file with county clerks." NACVSO further resolved to "monitor this process of all states' laws ensuring the privacy of their veterans' DD-214s [Reports of Separation] on file with county clerks, and make reports on this to the military, VA and other organizations."⁸ That second resolution certainly helped to sustain the drive to close local veterans' records.

In a report published in August 2002, the Army Legal Assistance Division at Ft. Benning, Georgia cited the Army New Service and other reports in an overview of its recent proposals to help service personnel protect their privacy.⁹ Within months, most of the state legislatures were considering legislation to protect veterans and reduce the threat of identity theft using military records recorded by counties.

By February, 2003 a national genealogical website reported that "an Internet search with DD214 identity theft as criteria received 744 hits. Many of these hits referenced articles in veterans newsletters...Many of the hits were redundant and contained much the same content."¹⁰

⁶Marcia Triggs, "Scams Target Veterans for Identity Theft," Advice/Comments From Retirees Blog, entry posted February 2, 2002, <http://www.militarywoman.org/retiree.htm> (accessed March 19, 2008).

⁷ "Some military records at risk for identity theft," *Army Echoes*, May 2002, US Army, http://www.armyg1.army.mil/rso/docs/echoes/02_May.doc (accessed Apr. 17, 2008).

⁸ National Association of County Veterans Service Officers, <http://www.nacvso.org/importantissues.asp> (accessed Mar. 18, 2008).

⁹ Anthony R. Tempesta, "'Identity theft' and DD Form 214: Georgia's legislative solution a model for others? – Department of Defense discharge form," BNET.COM, http://findarticles.com/p/articles/mi_m6052/is_2002_August/ai_94511777/print (accessed Mar. 12, 2008).

¹⁰ "Records Preservation and Access. Texas—Current Issues, Opinions," Federation of Genealogical Societies and National Genealogical Society, <http://www.fgs.org/rpa/TxCurrent.htm> (accessed Mar. 19, 2008).

ORIGINS OF THE PROBLEM IN NEW YORK

Since the Civil War, many states have encouraged veterans to have their military service records recorded with county clerks and courts. In New York, a special Bureau of Military Statistics was created in 1865. The Bureau was to “collect and preserve an authentic [biographical] sketch of every person from this state who has volunteered into the service...since April 15, 1861.”¹¹ The work of the Bureau of Military Statistics was supported by information on veterans collected by several state and local agencies. Nearly all of it is available today in its original form. Much of it has been published and is available to the public on microfilm.¹² In New York, information collected was included in open public records (census, town clerk’s reports, and annual reports of the state Adjutant General).

Chapter 214, Laws of 1920 provided for the voluntary recording of the honorable discharges of the veterans of World War I. In New York, veterans’ military records were generally recorded in the “Miscellaneous Records” kept by County Clerks until World War II. For the first time, this law included the date April 6, 1917 as the starting date for recording veterans’ records.¹³

Chapter 332, Laws of 1942, and Chapter 313, Laws of 1943 offered World War II veterans the same opportunity to have their discharges recorded by County Clerks.¹⁴

From time to time, the state Adjutant General, the State Historian and some cities and counties published summaries of local veterans’ records, including the names of those who served. Generally, veterans’ records were considered open public documents. In an age when identity theft was not a major threat, making veterans’ records public was a matter of personal and community pride while it also served the public interest.

In 1950, the New York State legislature passed what became Section 250 of the state Military Law. That statute provided for the continued recording of military

¹¹ Daniel Lorello, comp, *The Union Preserved: A Guide to Civil War Records in the New York State Archives*, Edited by Harold Holzer. (New York: Fordham Univ. Press and NYS Archives Partnership Trust), 1999. 17.

¹² Ibid. Appendices C-H. 109-122.

¹³ *Laws of New York*, ch. 214, (1920).

¹⁴ *Laws of New York*, ch. 332, (1942); ch. 313, (1943). The purpose of local recording was to provide an efficient means of providing local access to veterans’ records to expedite possible future benefits.

"discharge" documents (issued after April 6, 1917, the date of American entry into World War I) by county clerks, free of charge.¹⁵ The record made was considered a benefit to veterans for their personal use.¹⁶

Commercial use of the information found in local veterans' records was recognized as a problem by 1966. That year, the state Attorney General's office issued an opinion that allowed County Clerks "to refuse to disclose the contents of the [veteran's] certificate to those who have a purely commercial interest in them, since disclosure would not be for the veteran's benefit."¹⁷ Freedom of information laws had not yet outlawed the restriction of information based upon its potential use.

A legislative solution to the continued problem of inconsistent action by county clerks was enacted in 1968. That year, the state legislature passed Section 79-g of the state Civil Rights Law. By that statute, veterans were given "the right to direct the county clerk to keep such paper sealed and confidential." Upon the veteran's request, the county clerk could no longer make the service record available to the public. However, in the absence of a specific request to seal the veteran's record, public access was permitted.¹⁸ That opinion was confirmed by a 1994 advisory opinion provided in a letter from the Executive Director of the state Committee on Open Government to Warren Broderick, Senior Public Records Management Specialist at the State Archives. Director Robert J. Freeman stated that "when veterans [do] not direct that certificates of honorable discharge be sealed, I believe that those records must be disclosed." The state Freedom of Information Law, Freeman said, "is based upon a presumption of access."¹⁹

In 1998 a New Jersey resident challenged the refusal of the Westchester County (NY) Clerk to provide access to a veteran's record. The Freedom of Information Law (FOIL) was the basis of an appeal to the Committee on Open Government. Again, Director Freeman confirmed that a veteran could request that the clerk "seal" his record and that such a request closed the record to the public. Freeman also addressed the issue of personal information and privacy

¹⁵Laws of New York, ch. 298 (2005).

¹⁶New York State Assistant Solicitor General, Laura Etlinger, "Informal Opinion No. 2004-11," Oct. 25, 2004, Office of the Attorney General, http://www.oag.state.ny.us/lawyers/opinions/2004/informal/2004_11.pdf (accessed Apr 15, 2008).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Robert J. Freeman, Letter to Warren Broderick. The State Education Dept. State Archives and Records Administration, May 24, 1994, New York State Department of State, <http://www.dos.state.ny.us/coog/ftext/f8259.htm> (accessed Apr. 19, 2008).

stating that "the Freedom of Information Law permits an agency to withhold records to the extent that disclosure would constitute an unwarranted invasion of personal privacy." Therefore, Freeman said, "A local government agency may delete social security numbers from records," but was not obliged to do so. The judgment of the clerk would prevail. Considering previous opinions, Freeman concluded that "the provision...represents what might be viewed as an internal conflict in the law...[because] rights of access to a list of names and addresses, or equivalent records, may be contingent upon the purpose for which a request is made," a factor normally prohibited by the FOIL.²⁰

In 2004, the Attorney General's office concluded that previously filed certificates were vulnerable to "improper use unless veterans are made aware of their rights and take action to have the record sealed. Further legislative action may thus be necessary..."²¹ However, in New York "the change in State law closing public access to recorded veterans' DD214 discharges was a protracted process," according to the Albany County Clerk.²²

STATE SOLUTIONS

Several factors appear to have prompted rapid action by state legislatures after January 2002. The first was the rapid growth of the Internet and digital technology for copying and sharing information.²³ Probably, the relative ease with which organized veterans could influence state and local officials also contributed to the emphasis on state action. The Army New Service article that precipitated much of the effort to close county veterans' records pointed out that 46 states had enacted identity theft laws by 2002 and "many state lawmakers are considering toughening laws already on the books."²⁴ Much of that later effort would address the concerns of veterans.

²⁰ Robert J. Freeman, Letter to H. Detrick, Pennington, NJ, Jul. 14, 1998, New York State Department of State, <http://www.dos.state.ny.us/coog/ftext/f10925.htm> (accessed Apr. 20, 2008).

²¹ New York State Assistant Solicitor General, Laura Etlinger, "Informal Opinion No. 2004-11," Oct. 25, 2004, Office of the Attorney General, http://www.oag.state.ny.us/lawyers/opinions/2004/informal/2004_11.pdf (accessed Apr 15, 2008).

²²Thomas Clingan, email message to the author. February 2, 2008.

²³Jennifer Acosta, "You're Out of the Army Now: Potential Identity Theft Haunting Veterans and County Clerks," Texas Association of Counties, http://www.county.org/resources/library/county_mag/county/146/2.html (accessed Mar. 19, 2008).

²⁴Marcia Triggs, "Scams Target Veterans for Identity Theft," Advice/Comments From Retirees Blog, entry posted February 2, 2002, <http://www.militarywoman.org/retiree.htm> (accessed March 19, 2008).

Just a few months after the identity theft stories broke in military and veterans' publications, state legislatures began to respond. The Washington state legislature established a Working Group on Veterans' Records early in 2002. "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern." The Washington working group sought to "develop a means to preserve the integrity of the public record while protecting those veterans from identity theft."²⁵ Washington State passed the first restrictive legislation for local veterans' records, effective July 1, 2002.²⁶

By February, 2003 there were eight bills specifically addressing the issue of county veterans' records pending in the Texas legislature.²⁷ Coalitions of veterans groups, as well as NACVSO and the Property Records Industry Association (PRIA) lobbied state legislators across the nation, coordinated the effort, and provided legislative background information. According to Albany County (NY) Clerk, Thomas Clingan, "few elected officials could withstand the combination of veterans' groups and organizations dedicated to removing private information from public records, especially when local news media fanned the flames."²⁸ The result was a series of very similar state laws.

In part, that was the result of a recommended model statute prepared by the PRIA and NACVSO early in 2003. PRIA plainly stated that the "General Purpose Statute section [of the recommended model statute was] approved by the Executive Board of the Property Records Industry Joint Task Force on February 28, 2003 for immediate distribution in order to assist state legislatures in their 2003 sessions." The model statute included sections on "statement of purpose;" "definitions;" "acceptance policies;" "maintenance of the record;" "forms of access;" "access restrictions;" "request forms;" "handling of prior records;" "time limitations on confidentiality;" "filing and copy fees;" "funding;" "liability limitation;" "and effective date."²⁹

²⁵AccessWashington, Washington State Legislature, "Certain personal and other records exempt." "Working group on veterans' records." State of Washington, <http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56.210> (accessed Apr. 15, 2008).

²⁶"Addressing the Military Discharge Paper Confidentiality Problem: Suggested Statutory Language Based on a Review of Current Statutes." Property Records Industry Association, http://www.pria.us/Papers/militarypaper/model_statute.zip (accessed Apr. 20, 2008).

²⁷ "Records Preservation and Access." "Current Issues, Opinions." Federation of Genealogical Societies and National Genealogical Society, <http://www.fgs.org/rpa/TxCurrent.htm> (accessed Mar. 19, 2008).

²⁸Thomas Clingan.

²⁹"Addressing the Military Discharge Paper Confidentiality Problem: Suggested Statutory Language Based on a Review of Current Statutes," Property Records Industry Association,

Good tools for comparison of the state laws enacted in 2002-04 have been provided by PRIA and NACVSO. They are available at the websites of the two groups and were jointly developed. Their primary drawback is that the information presented is five years out of date in the case of the PRIA chart; four years in the case of NACVSO. On the PRIA chart, New York is shown as having no statutory provision for restricting access to veterans' records.³⁰ While there was none stated in the Military Law, the Civil Rights Law and Freedom of Information Law clearly provided some restrictions. The data in the same "State Summary and Statutes" chart published by NACVSO is only slightly less dated.³¹ As the PRIA and NACVSO documents show, no state followed the proposed model statute exactly. Most state laws appear to conform to the model statute regarding the list of those to whom the content of veterans' records can be disclosed; the veteran; the veteran's parent, spouse, dependents, legal representative; a public official; and those authorized in writing by the veteran. Most of the new state statutes require no filing fee and no fee for certified copies after filing. Only a few provide for the removal of records previously made public, on the Internet in particular. Length of closure ranges from 50 years to permanent. Only a few states provided for the closure of records prior to the enactment of a new statute. In a few states, the closure of local veterans' records provides for access by a genealogical society, a funeral director, the state librarian, or a veterans' advocate organization. Few states differentiate between content and use restrictions and few provided penalties for misuse.³²

THE NEW YORK EXPERIENCE

The drive to close the records of all veterans recorded at the county level (post-1917) appears to have followed much the same course in New York as in other states. At the request of former Attorney General, Eliot Spitzer, state Senator Michael Balboni introduced a bill to amend Section 250 of the Military Law on March 18, 2005. It was approved by the Committee on Veterans, Homeland Security and Military Affairs and became Chapter 298, Laws of 2005 by vote of the legislature on July 26, 2005.³³

http://www.pria.us/Papers/militarypaper/model_statute.zip (accessed Apr. 20, 2008).

³⁰ *Ibid.*

³¹ "State Summary and Statutes." National Association of County Veterans Service Officers, <http://www.nacvso.org/images/accesschart.pdf> (accessed Apr. 21, 2008).

³² *Ibid.*; "Addressing the Military Discharge Paper Confidentiality Problem: Suggested Statutory Language Based on a Review of Current Statutes." Property Records Industry Association, http://www.pria.us/Papers/militarypaper/model_statute.zip (accessed Apr. 20, 2008).

³³ Sen. Balboni, "Introducer's Memorandum in Support," Bill S3504, New York State Senate, 2004-2005 Regular Session. Sent to the author by the Ontario County Clerk.

The amended Section 250 of the Military Law was very like the original statute as last amended in 1987. That amendment had authorized parents, spouses, dependents and children to receive copies of records sealed at the request of the veteran. The words "male or female" were added to the term "veteran" then.³⁴ The new law provided for information disclosure to public officials and representatives of a veteran's estate. It specifically followed the recommendation of PRIA and NACVSO in the disclosures it allowed. The new law also stated that "no filed certificate or any information contained therein" should be disclosed to unauthorized persons. In effect, that made even the existence of the certificate restricted information. The new law took effect immediately and covered all "certificates of honorable discharge" filed since April 6, 1917. Section 250 already provided for free recording and certification of discharges.³⁵

Chapter 298, Laws of 2005, took only three months to pass. That was probably due to the lobbying efforts already discussed. In addition, Albany County Clerk, Tom Clingan, stated that "the County Clerks in 2002 began supporting a request that the law be changed to seal all recorded discharges... We were fairly successful in getting the State Senate to take action to end public access to these records, but the Consumer Affairs Committee of the state Assembly was reluctant to restrict any public access to records, until then-Attorney General Eliot Spitzer came out strongly in favor of such legislation."³⁶ The fact that few changes were actually made to existing law was probably a factor also.

In addition to a blanket restriction on access to veterans' records, the 2005 New York statute also resolved the conflicts between the Military Law, the Civil Rights Law and the Freedom of Information Law discussed earlier.³⁷

CONCLUSION

In 2006, several widely publicized breeches of security resulted in the possible compromise of millions of veterans' records by the US Department of Veterans Affairs (VA). In May of that year, two separate incidents resulted in the possible loss of more than 26.5 million names, birthdates, and social security numbers of veterans and their spouses. Three months later, a VA consultant's computer,

³⁴*Laws of New York*, ch. 648, (1987).

³⁵*Laws of New York*, ch. 298, (2005).

³⁶ Thomas Clingan, email message to the author. February 2, 2008.

³⁷Sen. Balboni, "Introducer's Memorandum in Support," Bill S3504, New York State Senate, 2004-2005 Regular Session. Sent to the author by the Ontario County Clerk.

containing 15,000 more records, was stolen. Although the VA offered assistance to affected veterans, the incidents sustained the campaign for protection of veterans' records, confirmed the general fears of veterans, and moved their focus to federal legislation and VA policy.³⁸

Since 2006, there has been little additional state action to close veterans' records recorded by counties. At the federal level, however, the problem of securing veterans' records is now being addressed in several ways. The VA had instituted new security measures including new identification cards for veterans and better physical security of their records as early as 2004. The VA press release announcing the new identification cards said that "requests from veterans and their congressional representatives were instrumental in bringing about these latest changes."³⁹ That agency, Congress, and many states have put in place laws and policies that provide assistance to veterans who believe that their identities have been compromised and better secure computerized records.

In 2007, a master's degree thesis at the Naval Postgraduate School examined the costs and benefits of eliminating the use of the social security number in favor of a unique military identification number (MIN). The author of the thesis found that "the transition to a MIN is a cost effective solution with a Net Present Value that falls between \$701 million and \$554 million over a 10 year period."⁴⁰ That incentive may herald a major change in Defense Department policy. The inclusion of social security numbers on military records, which began in 1969, is the single greatest problem cited by critics of the security of veterans' records. It is likely to be discontinued.

On its website, NACVSO states that veterans were in a "vulnerable condition" before the organization's "DD 214 Security project began." The majority

³⁸ "Consequences of Heightened Department of Veterans Affairs Information Security on Academic Medical Centers," Group on Information Resources, Sep. 2007, <http://www.aamc.org/members/gir/whitepaperonvasecurity.pdf> (accessed Apr. 15, 2008). This report cited a possible loss of 28.6 million records; New York Times, "Size of Military Data Theft Grows to Affect Millions of Troops," http://www.nytimes.com/2006/06/07/washington/07identity.html?_r=1&pagewanted=print&oref=slogin (accessed Apr. 15 2008).

³⁹"News Release." "Veterans' New ID Cards Help Battle Identity Theft." Nov. 4, 2004. United States Department of Veterans Affairs http://www.va.gov/opa/pressrel/opalist_listserv.cfm (accessed Apr 7, 2008).

⁴⁰George R. Oproia and Donald G. Maraska, "An Analysis of the Use of the Social Security Number as Veteran Identification as it Relates to Identity Theft; A Cost Benefit Analysis of Transitioning the Department of Defense and Veterans Administration to a Military Identification Number," Abstract of Master's thesis, Defense Technical Information Center, <http://stinet.dtic.mil/oai/oai?&verb=getRecord&metadataPrefix=html&identifier=ADA467355> (accessed Apr. 17, 2008).

of veterans' records were considered open public records. After one case of attempted identify theft was investigated, it was found that the perpetrator had "hundreds of veterans' names, social security numbers, and other information" in a laptop computer. "The common link found to all the names was that their DD 214s [Reports of Separation] were on the file with county clerks."⁴¹

As a result of the campaign to close veterans' records recorded by counties, thirty-three states strengthened or enacted laws to close those records by July 2007. Nine states still consider veterans' records to be public, although one of them (Indiana) allows social security numbers to be redacted. Other states have allowed veterans to remove their filed records. Eight other states (and the District of Columbia) have no provision for locally recorded veterans' records.⁴² For now, the issue is settled in New York. However, the drive to close county veterans' records throughout the nation will probably continue, albeit with less urgency.

⁴¹"Security for Veterans DD 214s. Introduction and Contacts," National Association of County Veterans Service Officers <http://www.nacvso.org/images/discharges.pdf> (accessed April 21, 2008).

⁴²*Ibid.*

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