

## **Public Access to Vital Records**

### **SB 865 – Senator Harry B. Blevins**

SB 865 sought to make genealogical records in Virginia more accessible to the public by amending the *Code of Virginia* § 32.1-271(D) to require the State Registrar to make birth, death, marriage, and divorce records available to the public when statutory timeframes for privacy expire. (Currently the *Code* reads that the records may become public information.) SB 865 was passed by indefinitely in the Senate Committee on Education and Health and a letter was sent to the Joint Commission on Health Care requesting the submission of a written report to the Chair of the Senate Education and Health Committee, the bill patron, and the Senate Clerk's Office.

### **Lead Staff for Report**

Stephen W. Bowman

### **Background**

The Office of Vital Records, which is housed in the Virginia Department of Health and supervised by the State Registrar, is the primary repository of vital records in the Commonwealth. *Code of Virginia* § 32.1-271(D) establishes the following timeframes for the public release of records maintained by the State Registrar:

Birth records – 100 years after the date of birth.

Death, marriage, and divorce records – 50 years after the date of occurrence.

Some family members are allowed to access vital records prior to their public release by presenting valid identification and paying a \$12 processing fee (immediate family may access all types of records, grandparents may request birth records by presenting evidence of need, and grandchildren and great grandchildren may access death records).

In addition, the Library of Virginia maintains birth, death, and marriage registers which may be accessed by the public, while local circuit courts maintain marriage and divorce records which are open for public inspection.

### **Concerns Related to Public Access**

Allowing public access to vital records is a policy decision which requires balancing the competing priorities of the privacy of an individual's records and public access to those records. Concerns related to allowing increased public access include: identity theft, the privacy of personal and family records, and potential loss of revenue for the Office of Vital Records.

*Identity Theft.* Considering that so much personal information is available already through Internet searches, the primary concern relates to the fact that vital records often include social security numbers. Social security numbers may be redacted from records and indexes, although this is less of a concern for death records since the federal government maintains a Social Security Death Index, a publicly-accessible listing that includes such personal information as name, date of birth and death, last address, and social security number.

*Privacy of Personal and Family Records.* As noted previously, a great deal of personal information is already available via Internet search. However, there are instances such as highly-publicized events (such as the 9-11 attack or Virginia Tech shootings) or causes of death that families might prefer remain private.

*Potential Loss of Revenue for the Office of Vital Records.* The Office's operations are funded by fees collected for searches and copies of vital records; in FY 2010, \$4.4 million in fees was collected. It is unclear what the financial impact of increasing public access to vital records would be; however, the demand for official birth, marriage, divorce, annulment, and death records is likely to continue.

The Office of Vital Records does not have a complete index or digitized copies of all records in its possession. Constructing an index and digitized records would be time-consuming and costly, but would allow records to be published online. Ancestry.com officials have indicated a willingness to create digitized records and/or an index of those records in exchange for a period of exclusive use.

### **Policy Options and Public Comments**

A total of 280 written comments were received regarding this study. Seventy-seven percent (216 of 280) of the respondents appear to live in Virginia and 15 genealogical or historical organizations commented. The majority of comments supported not further restricting access to vital records, but to expand public access.

In general, the comments fall into two broad categories: those that provided general feedback and those that addressed support or opposition to a particular policy option. Most of the general comments indicated that access to vital records should not be restricted further (116 comments) and/or that public access to vital records should be expanded (86 comments). Only three commenters recommended making no changes to existing policy and no one commented in support of further restricting access to vital records.

The specific comments of the Library of Virginia (LVA), Virginia Genealogical Society (VGA), Virginia Bankers Association, and Virginia Press Association (VPA) comments are summarized briefly below (*full comments for LVA, VGS, and VPA are in the Appendix*). After the summaries, comment counts for each specific option follows including a summary table.

- *Library of Virginia*
  - A. Vital record date restrictions should be kept as they are currently written
  - B. Electronic vital records indices should be compiled, beginning with those that are currently open public records
  - C. Indexing should be accomplished under the auspices of a state agency
  - D. Microfilm copies of open records should be made available for research at LVA

- *Virginia Bankers Association*
  - A. Oppose any release of SSNs; it would increase the likelihood of financial fraud and coupled with birth and death records could facilitate the use of false identities
- *Virginia Genealogical Society*  
(*These recommendations reflect the same preferences of 125 other comments*).
  - A. Decrease the closed period for the birth certificate to 75 years
  - B. Make marriage, divorce, annulment and death records immediately available in the public domain
  - C. Allow family members that “descended from a common ancestor” to be granted access to vital records during the closed period
  - D. Allow the Office of Vital Statistics to provide the Social Security Number on death certificates
  - E. LVA should control or supervise indexing publicly available vital records
- *Virginia Press Association*
  - A. Opposes the lengthening of statutory non-disclosure periods
  - B. Opposes a vital records index if it would only be available to the public through an exclusive provider at costs exceeding what the Freedom of Information Act provides

**Summary of Public Comments Received**

**Option 1:** Provide a written report to the Chair of the Senate Committee for Education and Health, the chief patron of SB 865 (Sen. Blevins), and the Clerk of the Senate, without taking any other action.

	<b>Comments in Support</b>	<b>Comments in Opposition</b>
<b>Option 1</b>	<b>3</b>	<b>150</b>

**Option 2:** Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that birth records “in the custody of the State Registrar may become public information” from 100 years to:

- A. 125 years (*preliminary recommendation of CDC*)
- B. 75 years (*in compliance with the Library of Virginia’s statutory confidential records time period*)

	<b>Comments in Support</b>	<b>Comments in Opposition</b>
<b>Option 2 - A</b>	<b>0</b>	<b>7</b>
<b>Option 2 - B</b>	<b>156</b>	<b>0</b>

**Option 3:** Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that marriage, divorce, and annulment records “in the custody of the State Registrar may become public information” from 50 years to:

- A. 75 years (*preliminary recommendation of CDC*)
- B. Immediately (*the records held by Circuit Courts are open for public inspection already*)

	Comments in Support	Comments in Opposition
<b>Option 3 - A</b>	<b>0</b>	<b>6</b>
<b>Option 3 - B</b>	<b>156</b>	<b>0</b>

**Option 4:** Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that death records “in the custody of the State Registrar may become public information” from 50 years to:

- A. 75 years (*preliminary recommendation of CDC*)
- B. 25 years (*Social Security Death Index provides extensive information already*)

	Comments in Support	Comments in Opposition
<b>Option 4 - A</b>	<b>0</b>	<b>6</b>
<b>Option 4 - B</b>	<b>152</b>	<b>0</b>

*In addition, 150 comments supported making death records immediately available instead of after 25 years.*

**Option 5:** Introduce legislation to amend the *Code of Virginia* § 2.2-3815 to allow the State Registrar to disclose the entire social security number on a deceased individual’s death record.

	Comments in Support	Comments in Opposition
<b>Option 5</b>	<b>152</b>	<b>1</b>

**Option 6:** Introduce legislation to amend the *Code of Virginia* § 32.1-271 to allow additional family members to receive birth, marriage, divorce and annulment records from the State Registrar in keeping with the authority that immediate family members currently have.

- Degree of lineal kinship to record requestor would need to be determined.
  - *Code of Virginia* § 6.2-1074 uses 5<sup>th</sup> degree kinship language
- The vital record disclosed may be of a living person.

	Comments in Support	Comments in Opposition
<b>Option 6</b>	<b>158</b>	<b>0</b>

*In addition, the vast majority of the comments supporting Option 6 urged that “family members” be defined liberally.*

**Option 7:** Introduce legislation to amend the *Code of Virginia* § 32.1-271 to allow additional family members to receive death records from the State Registrar in keeping with the authority that immediate family members currently have.

- Degree of lineal kinship to record requestor would need to be determined.

	Comments in Support	Comments in Opposition
<b>Option 7</b>	<b>162</b>	<b>0</b>

*In addition, the vast majority of the comments supporting Option 7 urged that “family members” be defined liberally.*

**Option 8:** Introduce a budget amendment to require the State Registrar to create by 2014, a publicly-available index of vital records that are authorized for release to the public. *(At a minimum, the Index would include first and last name, year of birth, and gender.)*

- A. The index will be created within the Office of Vital Records.
  - *Budget language and funding (amount to be determined)*
- B. VDH will seek to enter into a public-private partnership to create a publicly-available index by an organization that has demonstrated experience in copying and indexing historical vital records. *(State Registrar and the Library of Virginia may publish the index as well.)*
  - *Budget language*
- C. VDH will seek to enter into a public-private partnership to create a publicly-available index and digital copies of public vital records by an organization that has demonstrated experience in copying and indexing historical vital records. *(State Registrar and the Library of Virginia may publish the index as well.)*
  - *Budget language*

	Comments in Support	Comments in Opposition
<b>Option 8 - A</b>	<b>0</b>	<b>0</b>
<b>Option 8 - B</b>	<b>1</b>	<b>0</b>
<b>Option 8 - C</b>	<b>3</b>	<b>1</b>

*In addition, 152 comments suggested that they agreed with Option 8 in principle, but “the Library of Virginia should create and operate any index of vital records, since it has the expertise to do this.”*

## Public Access to Vital Records – SB 865 (Senator Blevins)

### Preliminary Summary of Public Comments Received

		Comments in Support	Comments in Opposition
<b>Option 1</b>	Take no action.	3	150
<b>Option 2</b>	Change time period for <u>birth records</u> to become public information from 100 years.		
	2-A – to 125 years	0	7
	2-B – to 75 years	156	0
<b>Option 3</b>	Change time period for <u>marriage, divorce, and annulment records</u> to become public information from 50 years.		
	3-A – to 75 years	0	6
	3-B – to immediately	156	0
<b>Option 4</b>	Change time period for <u>death records</u> to become public information from 100 years.		
	4-A – to 75 years	0	6
	4-B – to 25 years	152	0
	Individuals wrote in support of making death records available immediately	150	n/a
<b>Option 5</b>	Allow State Registrar to disclose entire SSN on death record.	152	1
<b>Option 6</b>	Allow additional family members to receive birth, marriage, divorce, and annulment records in keeping with the authority that immediate family members have now.	158	0
<b>Option 7</b>	Allow additional family members to receive death records in keeping with the authority that immediate family members have now.	162	0
<b>Option 8</b>	Introduce budget amendment to require the State Registrar to develop a publicly-available index by 2014		
	8-A – index created by Vital Records <u>which would require State general funds</u>	0	0
	8-B – index created using public-private partnership	1	0
	8-C – index and digital copies of records created using public-private partnership	3	1
	Individuals wrote in support of the principle of Option 8	152	n/a
	Individuals wrote in support of allowing the Library of VA (due to its expertise) to create and operate an index of vital records	150	n/a

# APPENDIX



Sylvia Reid <sreid@jchc.virginia.gov>

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## Public Access to Vital Records, SB 865

1 message

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Treadway, Sandra (LVA) <Sandra.Treadway@lva.virginia.gov>  
To: sreid@jchc.virginia.gov

Tue, Oct 4, 2011 at 4:00 PM



Sandra Gioia Treadway  
Librarian of Virginia

October 4, 2011

Joint Commission on Health Care  
P.O. Box 1322  
Richmond, VA 23218

Dear Sirs:

The Library of Virginia has become aware of a possible recommendation to create legislation that would limit access of Virginia citizens to the vital records of the Commonwealth. This concerns us greatly and we feel that it is important to comment on this attempt to restrict information that is of research interest to our patrons.

As State Librarian of Virginia, head of an agency devoted to the promotion of research and access to public information, as well as the protection of the rights of Virginia's citizens, I am deeply concerned with recent developments regarding the vital records of Virginia. Attempts to restrict access to public information are a very real concern to me and to our agency.

I have read the recent JCHC report on Public Access to Vital Records [SB 865] compiled by Stephen W. Bowman and would like in my official capacity to comment on various options and proposals contained in the report.

Many of our patrons are interested in family research and in developing a greater sense of family and community. Ready access to open vital records assists in this study and we seek to promote and enhance this research to the fullest extent of the law. There is no nefarious purpose behind the research of our constituents, merely an attempt to gain a greater sense of history and belonging in an age of rapid and impersonal communication and high mobility. Our mission is to promote this research and in this effort, there

is the added benefit to the Commonwealth of increased tourism and an enhanced revenue stream created by visitors to the Commonwealth from other states.

We are suggesting that the date restrictions be maintained as they are currently are written – 50 years for deaths and marriages and 100 years for births. Virginia’s restrictions are currently on the conservative end of the spectrum with regard to other states. In addition, we recommend that electronic indices be compiled to the vital records, beginning with those that are currently open public records [according to the statutes in effect]. This would start with death certificates prior to 1962. We would be glad to talk with the State Registrar about a plan to work out how this is to be accomplished. This proposal is beneficial to all parties involved – making the location of certificates easier for BVS staff, increasing customer satisfaction by eliminating negative search results, and enhancing the availability of information for family researchers. A possible additional benefit to BVS could be increased revenue based on the proven existence of records that would stimulate interest. We also believe that this indexing should be accomplished under the auspices of a state agency, not a private concern, as these are public records and access should not be restricted to paying or subscription customers.

We are also recommending that microfilm copies of these legally open records be made available for research use at the Library of Virginia. Concern about revenue loss by BVS, though seemingly a moot point based on the Bowman report (genealogical requests accounting for less than 1% of the funds received), can be allayed by the Library of Virginia only providing access to these public records, not copies to this information. Certified copies would have to be obtained from the BVS.

We feel that these recommendations, not requiring any additional legislation, but following the statutes as written, will provide the fullest possible access to public information while maintaining privacy protection, and will be viewed as a positive reaction by the state agencies involved to public concerns.

Thank you for your consideration and the opportunity to express my concern regarding the proposed legislation. I will be delighted to speak with you regarding this should you have any questions.

Sincerely,

Sandra G. Treadway  
Librarian of Virginia

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*Sandra Gioia Treadway  
Librarian of Virginia/State Archivist  
Library of Virginia  
800 East Broad Street  
Richmond, Virginia 23219-8000  
(804) 692-3535  
[Sandra.Treadway@lva.virginia.gov](mailto:Sandra.Treadway@lva.virginia.gov)*

**VIRGINIA GENEALOGICAL SOCIETY**

1900 Byrd Avenue, Suite 104  
Richmond, Virginia 23230-3033  
Telephone: (804) 285-8954  
Facsimile: (804) 285-0394  
Email: mail@vgs.org

October 4, 2011

Joint Commission on Health Care  
P. O. Box 1322  
Richmond, VA 23218

Re: Public Access to Vital Records  
SB 865

Dear Sirs:

The Virginia Genealogical Society (“VGS”) would like to offer its comments in response to the September 19 Staff Report on Public Access to Vital Records.

We believe that the Staff Report is unnecessarily confusing and needlessly masks what should be two simple reforms addressed in our March 30, 2011 letter to the Commission:

- 1. Family members (liberally defined) should be granted liberal access to “closed” records.**
- 2. Death certificates held by the Virginia Department of Health (“VDH”) should become “open” public records immediately, not after 50 [or 75] years.**

First, we would like to thank Senator Blevins for introducing legislation seeking to reform what we believe is a seriously flawed system as presently operated by the Virginia Department of Health (“VDH”). We hope that members of the public offered comments which will be focused in this report, but there is a great deal of unfocused anger and frustration among the public growing out of VDH’s policy of denying grandchildren and other “non-immediate” family members access to vital records; and the Staff Report, which offers lengthening, rather than shortening, closed periods among its options, seems designed to confuse and exacerbate the present situation, not reform it.

Since this is a Joint Commission on Health Care, we were surprised that the Staff Report did not focus on the U.S. Surgeon General's emphasis on creating family health histories (see [www.hhs.gov/family/history](http://www.hhs.gov/family/history)), which is mirrored by the Center for Disease Control ("CDC"). **"Whenever possible, get copies of medical records, birth or death certificates to determine the type of health condition diagnosed in your relatives" (U.S. Surgeon General's Family History Initiative).** While those reports focus initially on obtaining oral histories, various studies on the CDC website question the accuracy of oral data and recognize that death certificates are a much more reliable source of health information.

We were also surprised that privacy rights related to death certificates were raised as an issue in the Staff Report, since a decedent has no right of privacy under Virginia law (except for commercial misappropriation of a name or likeness, limited to 20 years. VA Code §8.01-40.B). Copies of these death records are open and available at local Clerk's Offices, so it is hard to understand why the Staff Report would assert a privacy right which does not exist in Virginia.

We are also very concerned that the Staff Report included as "preliminary recommendation of CDC" lengthening "closed" periods by 25 years as an option, apparently based on a verbal description of an unpublished draft of a 2011 Committee studying revisions to the 1992 Model State Vital Statistics Act and Regulations, which draft has not yet been released for public comments, much less adopted.

However, if the Model State Vital Statistics Act and Regulations are to be used as a reference point by the Commission, then 1992 Model Regulation 13(a)(1) for state vital records custodians is highly relevant; **"Family members doing genealogical research or genealogists representing a family member, may obtain copies of records needed for their research."**

Had VDH adopted and liberally followed this 1992 Model Regulation, much of the current public dissatisfaction with VDH could have been avoided. The Staff Report failed to mention this provision of the 1992 Model Act and Regulations, which has been in place for almost twenty years.

The Staff Report also suggested that new "identification requirements" for family members may be difficult or time consuming to verify (Slide 20). Currently, all that is required by VDH for immediate family members is a copy of the applicant's driver's license or similar identification and a statement of the claimed family relationship, with a

reminder that a false application is punishable as a felony. Why would more identification requests or verification be added for any extended family members?

Finally, it seems fairly obvious that VDH sees its mission as denying access to what should be public records. VDH's decision to "investigate" releasing ownership of 19<sup>th</sup> century vital records to the Library of Virginia ("LVA"), the State agency charged with maintaining archival records (Staff Report Slide 17), but not mentioning releasing to LVA the 20<sup>th</sup> century vital records which are now "open," and VDH's history of refusing to accommodate genealogical researchers, are symptomatic of this problem. While allowing Ancestry or a similar provider to create an index to VDH records is a laudable goal, LVA, which is the state agency with expertise in: i) dealing with Ancestry, ii) creating indexes for researchers, and iii) providing services to genealogical and historical researchers, should be given control of any Ancestry indexing project, while recognizing that the bulk of any revenues generated by an indexing project should go to VDH.

In response to the specific Policy options in the Staff Report, VGS urges:

**Option 1. Reform of the current VDH system is needed. Doing nothing is not a responsible or desirable option.**

**Option 2B. Reduce the closed period for birth records to 75 years.**

**Option 3B. Immediately open marriage, divorce and annulment records (which are already open at the local Clerk's Office).**

**Option 4B. VGS supports 4B, but as further amended to immediately open death records (which are already open at the local Clerk's Office).**

**Option 5. Yes. The Social Security numbers of decedents are already opened by the Social Security Death Index, and pose no risk of identity or credit theft.**

**Option 6. Yes. The standard should be that any family member "descended from a common ancestor" can access those records, with no greater proof or verification than is presently required. While it is not clear why a "degree of kinship" must be established in the statute, if this is even necessary then "descended from a common ancestor within the preceding five generations" should suffice.**

**Option 7. Yes. See comments under Option 6, though again, VGS believes death records should immediately be “open” with no closed period.**

**Option 8. Yes, but LVA should control or supervise any indexing project of vital records.**

Thank you for the opportunity to offer these comments on what is an issue of great public concern.

Sincerely,

A handwritten signature in black ink that reads "Donald W. Moore". The signature is written in a cursive style with a large, prominent 'D' at the beginning.

Donald W. Moore  
Vice President

cc: Committee Members  
#1199565



CHRISTIAN & BARTON, LLP  
ATTORNEYS AT LAW

CRAIG T. MERRITT  
Direct Dial: 804.697.4128  
Direct Fax: 804.697.6128  
E-mail: [cmerritt@cblaw.com](mailto:cmerritt@cblaw.com)

October 4, 2011

**By E-mail to [sreid@jchc.virginia.gov](mailto:sreid@jchc.virginia.gov)  
and by First Class Mail**

Joint Commission on Health Care  
P.O. Box 1322  
Richmond, VA 23218

Re: Virginia Press Association Comments on Policy Options  
for Vital Records Disclosure in Virginia

Dear Members of the Commission:

We write on behalf of the Virginia Press Association (“VPA”) to express its views on certain policy options presented on September 19, 2011, by the JCHC staff. Those options are found in a Power Point presentation on the JCHC website and are familiar to you. The options were presented in response to an effort by Sen. Blevins to accomplish a modest improvement in public access, as set forth in SB 865.

We note that the options are preceded by a discussion of vital records policy that makes certain assumptions about privacy and public access to records. To the extent those assumptions are incorrect, they may lead to a preference for poor policy options, and they should be examined.

First, the staff identifies “privacy of an individual’s records” as one of two competing priorities in setting policy. The discussion assumes that an individual has a privacy interest in the date of his or her birth, marriage, divorce or death, and in the identity of a spouse. The basis for that assumption is never identified -- it is simply presented as an *ipse dixit*. In fact, there is no privacy interest in such basic facts about historical events.

Second, the report assumes that an individual maintains a privacy interest after death. The law is clear that privacy interests, where they do exist, belong to the individual. Those interests die with the individual, and do not belong to his or her survivors.

Third, we are fortunate that federal and Virginia access laws already address concerns over identity theft. As the staff analysis notes, the federal government has a protocol for publicizing the Social Security numbers of citizens who die. Virginia law

prohibits the release of full Social Security numbers, and permits redaction of financially-sensitive personal information.

Fourth, it is notable that the staff analysis, when “balancing” the privacy and public access issues, always associates costs with providing access, but never with keeping vital records closed for decades under the rubric of maintaining “privacy.” Many of the costs that the staff has associated, either explicitly or implicitly, with increased access to vital records are not the result of the neutral operation of freedom of information laws. Rather, they assume the adoption of regulatory rules that complicate access or the hiring of private vendors to provide value-added services. Although it may prove worthwhile to build searchable databases, such a program should not be confused with the ability of a citizen to ask for basic records about births, deaths, marriages and divorces, all of which can be made available to the public at the actual cost of providing them. The staff analysis assumes, on the other hand, that there are no economic or social costs associated with keeping vital records closed for decades.

We note further that VPA, although it has not opposed the use by public bodies of value-added services, has always maintained that the purpose of access laws is to provide at all times a direct and low-cost route for citizens to obtain public information. Thus, to the extent any agency has considered the creation of an online database as an exclusive means to provide access to public information (typically to capture an anticipated revenue stream), the VPA has opposed such proposals and will continue to do so.

Finally, Virginia’s current system, which compels confidentiality within a state-level office while permitting access to many of the same vital records locally without imposing any waiting period, is not rational. The fact that no harm has been shown to result from making certain vital records available at the local level speaks volumes about the overstatement of the harms that would accrue if vital records were released by the state.

With the above considerations in mind, VPA opposes the lengthening of statutory non-disclosure periods set forth in policy Options 2, 3 and 4. Those choices have no rational basis. They are simply an arbitrary lengthening of statutory periods for closing vital records that are already longer than either privacy law or access law can justify. To the extent Option 8 implies that vital records would only be available to the public through an exclusive provider, at costs exceeding the costs provided under Virginia’s Freedom of Information Act, VPA opposes that option.

The VPA appreciates this opportunity to comment, and will be pleased to provide further information on its views should the Commission find it helpful.

Respectfully submitted,



Craig T. Merritt

cc: Senator George L. Barker  
Senator Harry B. Blevins  
Senator R. Edward Houck  
Senator L. Louise Lucas  
Senator Ralph S. Northam  
Senator Linda T. Puller  
Senator Patricia S. Ticer  
Senator William C. Wampler, Jr.  
Delegate Robert H. Brink  
Delegate David L. Bulova  
Delegate Benjamin L. Cline  
Delegate Rosalyn R. Dance  
Delegate T. Scott Garrett  
Delegate Algie T. Howell, Jr.  
Delegate Harvey B. Morgan  
Delegate David A. Nutter  
Delegate John M. O'Bannon, M.D.  
Delegate Christopher K. Peace  
*(Via electronic mail)*



# COMMONWEALTH of VIRGINIA

Karen Remley, MD, MBA, FAAP  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

October 14, 2011

Ms. Kim Snead, Executive Director  
Joint Commission on Health Care  
P. O. Box 1322  
Richmond, VA 23218

Dear Ms. Snead:

I am writing in response to the Joint Commission on Health Care's report titled "Public Access to Vital Records. The report was quite thorough in its approach to analyzing and summarizing the various issues involved. The Virginia Department of Health (VDH) appreciates this opportunity to comment on the report's findings and policy options.

As indicated in the report, the degree of public access to vital records must be balanced against the privacy of an individual's records. Data or information contained on a vital record is confidential and must be protected. The State Registrar and the Division of Vital Records is charged with protecting the integrity of vital records and ensuring the efficient and proper administration of the vital records system. The CDC's Model State Vital Statistics Act (Model Act) provides detailed guidance to States that are considering revision of their own State vital records laws and regulations. The Model Act also serves to promote uniformity among States in areas such as authorities, definitions, registration and issuance practices.

VDH appreciates that vital records are important for genealogists, and always strives to be of assistance for genealogical research. However, consideration should be given to safeguarding a living registrant's vital records. The Model Act states "*Due to increased requirements of civil registration in the context of national security and the use of live birth records as primary identity documents, the State Registrar must take measures to prevent the fraudulent use of vital records for purposes such as identity theft or terrorism, the State Registrar must maintain security of personnel, physical environments, electronic systems, and preservation methods. In addition, the State Registrar must perform data assurance and record matching activities to protect the confidentiality and security of vital records and prevent their fraudulent use.*"

A workgroup comprised of State vital records and statistics executives has been evaluating the Model Act, originally issued in 1992, and making recommendations for revisions. One of the recommendations for the States to consider is increasing the time period before a vital record becomes public information—to 125 years for births records, 75 years for deaths records and 100 years for marriage and divorce records. Given increasing life expectancies, increasing the current

statutory time period should help ensure that the birth, marriage and divorce records of a living individual is not made a public record. As noted in the report, Virginia is a "closed record" state, as are most other states. Policy Options 2, 3, and 4 all involve changing the time period before vital records become public information. If the Joint Commission on Health Care adopts any of these policy options, VDH believes that the most appropriate action would be to increase that amount of time, rather than decreasing it. VDH believes that increasing the time period before a vital record becomes public information would help protect the integrity of information contained on an individual's vital record.

As stated in the report, §2.2-3815 of the *Code of Virginia* mandates that the first five digits of a social security number contained in a public record shall be confidential and exempt from disclosure under the Freedom of Information Act. Section 2.2-3815(B)(4) provides an exemption if the record is released to the person whose social security number is listed or to his parent, if he is a minor. The Division of Vital Records is continuing to work with the Office of the Attorney General in order to review its social security number disclosure policies and practices to ensure that it complies with this statutory provision. Should the Division of Vital Records be required to redact social security numbers prior to providing copies of vital records, it is expected that the processing time for responding to vital records requests will increase. Furthermore, if social security numbers are redacted from vital records, the vital record may no longer be of any value to the recipient.

Policy Option 5 calls for legislation to amend 2.2-3815 allowing the State Registrar to disclose the entire social security number on a deceased individual's death record. VDH supports policy option 5, but would suggest that the option be broadened to include all vital records issued by the Division of Vital Records, rather than being limited strictly to death certificates. VDH believes that this policy option would benefit immediate family members, local, state and federal agencies as well as other entities using the vital records in the conduct of their official duties.

Although there may be different expectations of privacy for deceased individual's death records, the data or information listed is still considered confidential. Please note that, effective November 1, 2011, the Social Security Administration's (SSA) Public Death Master File will no longer disclose protected State records. The Social Security Act prohibits SSA from disclosing State death records; therefore, SSA cannot legally share those State records on the Public Death Master File.

Policy Options 6 and 7 would allow additional members of an individual's family, beyond those currently authorized, to receive copies of that person's vital records. The Regulations Governing Vital Records (12VAC5-550-470) clearly prescribes how individual requests for vital records should be handled and distinctively defines who should have access to vital records. The regulations specify that the requestor of a vital record have "a direct and tangible interest in the content of the record and that the information contained therein is necessary for the determination or protection of personal or property rights." A direct and tangible interest may be evidenced by requests from the registrant, members of his immediate family, his guardian, or their respective legal representatives. "Immediate family" as defined in the Regulations means a registrant's mother, father, sibling, current spouse, adult children and grandparents. If additional family members are added by the degree of kinship, as contemplated by policy options 6 and 7, it will be necessary for the customer to prove their kinship to

the registrant and for the Division of Vital Records to verify this information. Proving the validity of the customer request will place an undue burden on the Division of Vital Records.

Policy Option 8 pertains to the development, by 2014, of a publicly-available vital records index. VDH agrees that the automation of Virginia's vital records system, which could include development of such an index, is in the public interest. However, the availability of sufficient funding to support automation is a key issue affecting the extent and timetable of automation efforts. As stated in the report, the amount of additional funding necessary to support establishment of an index needs to be determined. The Virginia Vital Statistic Automation Fund was established by the Commonwealth for the purpose of fully automating the system of vital records. However, the current Automation Fund balance will not be able to sustain a major index project. The Division of Vital Records has successfully automated birth records. The Division of Vital Records has various stages of electronic indices on marriage (1960-present), divorce (1960-present) and death (1955-present) records and should be able to create a publicly available index of the vital records that are authorized for release to the public (i.e., going back to 1912); however, this will not be available by 2014. In addition, given adequate resources and time, vital records from 1853-1896 could also be indexed as part of a major index project. Introduction of a budget amendment, as envisioned by Policy Option 8, should ensure that the Automation Fund is continued and that substantial monies from the collection of vital records fees are continually added to the Fund to foster and perpetuate the further automation of the Division of Vital Records and enable it to keep up with changing technologies.

VDH believes that it is worthwhile to explore the avenue of entering into a public-private partnership in creating a publicly available index. However, if the VDH were to enter into a public-private partnership, the State Registrar must maintain control of the vital records. Moreover, because of the confidential information listed on vital records, and the responsibility to protect that information, VDH does not support placing digital copies of vital records on line. Finally, it is important to note that, if the Division of Vital Records should move into the realm of public access, technological security measures need to be in place to ensure that the security and integrity of the vital records system is maintained.

Thank you again for the opportunity to review and comment on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Remley", with a long horizontal flourish extending to the right.

Karen Remley, MD, MBA, FAAP  
State Health Commissioner