

November 14, 2007

Marci Andino, Executive Director  
South Carolina Election Commission  
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Dear Ms. Andino:

In a letter to this office you questioned whether the State Election Commission is required to provide social security numbers on lists of potential jurors.

In responding to your question, several State statutes are relevant. S.C. Code Ann. § 7-5-170 states that

[n]o person may be registered to vote except upon written application which shall become a part of the permanent records of the board to which it is presented and which must be open to public inspection. However, the social security number contained in the application as required by this section must not be open to public inspection.

The application must be on a form prescribed and provided by the executive director and shall contain the following information: name, sex, race, social security number, date of birth, residence address, mailing address, telephone number of the applicant, and location of prior voter registration.....(emphasis added).

S.C. Code Ann. § 14-7-130 states that

In September of each year, the Department of Motor Vehicles shall furnish the State Election Commission a computer tape of the name, address, date of birth, social security number, sex, and race of persons who are over the age of eighteen years and citizens of the United States residing in each county who hold a valid South Carolina driver's license or an identification card issued pursuant to Section 57-3-910. The computer tape also must include persons who have obtained a valid South Carolina driver's license or identification card during the previous year, and exclude persons whose

driver's license or identification card has not been renewed or has been invalidated by judicial or administrative action. In October of each year, the State Election Commission shall furnish a jury list to county jury commissioners consisting of a tape or list derived by merging the list of registered voters in the county with county residents appearing on the tape furnished by the department, but only those licensed drivers and identification card holders who are eligible to vote may be included on the list....

S.C. Code Ann. § 56-1-90 provides that “[t]he Department of Motor Vehicles may require every applicant to submit for identification purposes proof of name, Social Security number, and date and place of birth when applying for a driver’s license.” Therefore, consistent with such provisions, a social security number may be required from any individual registering to vote and applying for a driver’s license. However, Section 7-5-170 is specific in mandating that the social security number required to register to vote is not “open to public inspection.” I am unaware of any specific statutory requirement that the merged list supplied by the State Election Commission to the county jury commissioners contain social security numbers of registered voters or those possessing driver’s licenses or identification cards.

A prior opinion of this office dated March 14, 1990 referenced Section 7 of the Federal Privacy Act of 1974, which pertains to the disclosure of social security numbers. Such provision makes it unlawful for any federal, state or local government agency to deny any individual any right, privilege or benefit because of the individual’s refusal to disclose his social security number. Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896.<sup>1</sup> It appears that, consistent with the March 28, 2007 opinion of this office, the State Election Commission and the State Department of Motor Vehicles would be considered a state agency.<sup>2</sup> See also: Krebs v. Rutgers, 797 F.Supp. 1246 (D.N.J. 1992). However,

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<sup>1</sup>As noted in an opinion of this office dated March 28, 2007, this provision is included in the notes to section 552a of title 5 of the United States Code. Nevertheless, such provision was not codified with other provisions of the federal Privacy Act in section 552a. However, the opinion notes that

[t]he fact that Congress did not chose to codify section 7 lead to much discussion about its application. However, the federal courts addressing this issue upheld the application of these provisions relying on the principle that the Statutes at Large prevail over the United States Code even if a portion of the Statutes at Large are omitted from the United States Code. See, e.g., Schmitt v. City of Detroit, 395 F.3d 327 (6<sup>th</sup> Cir. 2005). Thus, the provisions of the federal Privacy Act contained in section 7 are presumed valid and retain the force of law.

<sup>2</sup>However, as noted in the March 28, 2007 opinion, at least one federal court has contended that the Privacy Act does not apply to state agencies. See: Schmitt v. City of Detroit, 395 F.3d 327 (6<sup>th</sup> Cir. 2005). That opinion noted nevertheless that the Eleventh Circuit had determined that the Privacy Act  
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such provision in subsection (B) further states that such denial of any right, privilege or benefit is not applicable with respect to

...the disclosure of a social security number to any federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

The referenced 1990 opinion noted that the requirement that an applicant for voter registration report his social security number has been utilized for voter registration since at least 1974. Therefore, disclosure of a social security number by an applicant for voter registration may be required consistent with federal law.

As to the Privacy Act of 1974, an opinion of this office dated October 4, 1995 cited the decision in Tribune-Review Publishing Co. v. Allegheny County Housing Authority, 662 A.2d 677 at 682 (Pa. 1995) where it was stated that the purpose of the Act

...was to “curtail the expanding use of social security numbers by federal and local agencies and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers...Additionally, Congress sought “to promote governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees, to observe certain constitutional rules in computerization, collection, management, use, and disclosure of personal information about individuals...Clearly, Congress enacted the Privacy Act with the intent to limit the availability of social security numbers.

That opinion concluded that records of the office of the clerk of court which are disclosed to the public which contain social security numbers of individuals should have the social security numbers redacted prior to disclosure.

The previously-noted opinion of this office dated March 28, 2007 referenced a prior opinion dated July 5, 1996 which indicated that

[t]he purpose of the federal Privacy Act is to curtail the growing use of social security numbers as a universal identifier, to discourage improper use of the number, to eliminate the encroachment on privacy, to provide individuals with the opportunity to

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<sup>2</sup>(...continued)

did apply to state agencies. See: Schwier v. Cox, 340 F.3d 1284 (11<sup>th</sup> cir. 2003). The 2007 opinion concluded that “...in prior opinions, while not specifically addressing the application of section 7 of the federal Privacy Act to state and local agencies, we presume its application.”

make an intelligent decision whether to disclose the number, and with some exceptions, to allow the individual the option to refuse disclosure without repercussions.

As to utilization of social security numbers for driver's licenses, reference was made in the March, 1990 opinion to 42 U.S.C. § 405 (C)(i) of the Social Security Act which states that

[i]t is the policy of the United States that any State...may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State...or any agency thereof having administrative responsibility for the law involved, the social security number...issued to him by the Commissioner of Social Security.

Subsection (vi)(I) of such provision states that

[f]or purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above....

The March 14, 1990 opinion referenced above noted that the Department of Motor Vehicles "...did not have a system of records operating before January 1, 1975 which required disclosure of the numbers for purposes of identification..." The opinion further states that

...the Social Security Act permits the State of South Carolina, in the administration of driver's license law, to require disclosure of an individual's social security number and to utilize said number for the purpose of establishing the identification of those affected by the driver's license law...If the Department requires disclosure of the numbers in the administration of the driver's license law and for the purpose of establishing the identification of those affected by the driver's license law, then it is properly doing so under the...amendment to the Social Security Act...

I am assuming that the Department of Motor Vehicles requires disclosure of a social security number to establish the identity of those applying for a driver's license. Consistent with such, it appears that the disclosure of a social security number for voter registration purposes or to obtain a driver's license may be required consistent with federal law.

Also to be considered is the Driver's Protection Act of 1994 (DPPA), 18 U.S.C. §§ 2721 et seq., which regulates the disclosure of personal information which is contained in the records of state departments of motor vehicles. As referenced in Reno v. Condon, 528 U.S. 141 at 144 (2000),

[t]he DPPA establishes a regulatory scheme that restricts the States' ability to disclose a driver's personal information without the driver's consent. The DPPA generally prohibits any state DMV, or officer, employee, or contractor thereof, from "knowingly disclos[ing] or otherwise mak[ing] available to any person or entity personal information about any individual obtain by the department in connection with a motor vehicle record."<sup>3</sup>

As set forth in Reno, "personal information" is defined as any information that "...identifies an individual, including...(a)...social security number..." Id. The Court in Reno noted that the DPPA permits a department of motor vehicles to release personal information related to motor vehicle records for a number of purposes. For instance, disclosure is permitted "[f]or use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, state, or local agency in carrying out its functions." 18 U.S.C. § 2721(b)(1). Therefore, consistent with such, it appears that the release of social security numbers by the State Department of Motor Vehicles to the State Election Commission would be authorized. However, as stated above, I am unaware of any specific statutory requirement that the merged list supplied by the State Election Commission to the county jury commissioners contain social security numbers of registered voters or those possessing driver's licenses or identification cards.

Also to be considered in responding to your question is this State's freedom of information act. It appears that if a jury list is made available to the public, there is the potential for public release of the social security numbers of individual jurors. An opinion of this office dated May 9, 2007 stated that

...having improper access to a social security number and then disclosing such could...constitute an unreasonable invasion of an individual's personal privacy under this State's freedom of information act, S.C. Code Ann. §§ 30-4-10 et seq. Section 30-4-40(a)(2) exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy...That opinion concluded that "...to disclose an individual's social security number could easily constitute an unreasonable invasion of the individual's personal privacy under our State's Freedom of Information Act, as well as constituting a violation of the federal Privacy Act of 1974 and the constitutionally protected right to privacy.

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<sup>3</sup>It is noted that the DPPA's ban on disclosure of any personal information is inapplicable if a driver has agreed to the release of such data noting further that the consent must be an affirmative consent and not just an implied consent.

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Another opinion of this office dated October 23, 1995 referenced a prior opinion which stated that

[a]n individual's social security number should most probably not be disclosed pursuant to a freedom of information request. The disclosure of a social security account number, unless authorized by a statute, such as the federal Privacy Act, has been found to constitute a clearly unwarranted invasion of personal privacy.

See also: Re: INTERIM GUIDANCE REGARDING PERSONAL DATA IDENTIFIERS AND OTHER SENSITIVE INFORMATION IN APPELLATE COURT FILINGS, \_\_\_ S.C. \_\_\_, 650 S.E.2d 462 (2007) (if social security numbers are used in court records filed in appellate courts, only the last four numbers of that number should be used); State ex rel. Beacon Journal Publishing Co. v. Bond, 781 N.E.2d 180 (Ohio, 2002) (certain information, including social security numbers, "should be redacted" from juror questionnaires before they are disclosed); Op. Atty. Gen. dated May 18, 1999 ("neither federal law nor the State Freedom of Information Act requires public disclosure of the social security number which is now mandated by federal law a part of a marriage license application.").

The whole matter of personal privacy with respect to an individual's social security number was examined in Greidinger v. Davis, 988 F.2d 1344 at 1353-1354 (4<sup>th</sup> Cir. 1993) where the court observed

[s]ince the passage of the Privacy Act, an individual's concern over his [social security number's] confidentiality and misuse has become significantly more compelling. For example, armed with one's [social security number], an unscrupulous individual could obtain a person's welfare benefits or social security benefits, order new checks at a new address on that person's checking account, obtain credit cards, or even obtain the person's paycheck...Succinctly stated, the harm that can be inflicted from the disclosure of a [social security number] to an unscrupulous individual is alarming and potentially financially ruinous.

An opinion of the Connecticut Attorney General dated January 20, 1998 dealt with the question of whether local registrars of voters were required by law to supply social security numbers of voters to the State Jury Administrator to assist that administrator in preparing a master jury list. In the opinion, reference was made to the fact that voters were not notified that their social security numbers would be supplied to the jury administrator and a private contractor who had been engaged to assist in the master jury list preparation. Reference was also made to section 7(B) of the federal Privacy Act which states that "[a]ny federal, state, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." The opinion concluded that "[i]t is reasonable to assume, therefore, that the legislature intended that voters' social security numbers would be available to the jury administrator only after voters were notified that they would be disseminated in this manner and they, thereafter, voluntarily disclosed their social security numbers to the registrars."

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As to your specific question, in the opinion of this office, the authorities cited above support the conclusion that the State Election Commission is not required or authorized to provide social security numbers on lists of potential jurors. First of all, as noted, by Section 7-5-170 a social security number which is contained in a voter application "must not be open to public inspection". Supplying a social security number on a list of potential jurors would appear to be in conflict with such provision. As noted, the collection of social security numbers from applicants for voter registration when they register to vote and apply for a driver's license and the release of that information to the State Election Commission and the Department of Motor Vehicles is authorized consistent with federal and state law. However, I am unaware of any specific State statutory requirement that the merged list supplied by the State Election Commission from the list of individuals holding a driver's license or identification card or who are registered to vote to the county jury commissioners contain social security numbers of these individuals. In the absence of a specific provision authorizing such release to county jury commissioners, it appears that the voluntary release of social security numbers may be violative of other provisions. As noted, disclosure of a social security number in such circumstances may be inconsistent with this State's freedom of information act. Also, such disclosure may be inconsistent with the provision of the federal Privacy Act cited above which mandates that when a request is made of an individual to disclose his or her social security number that individual shall be informed "whether that disclosure is mandatory or voluntary, by what statutory authority or other authority such number is solicited, and what uses will be made of it." As noted there is no apparent statutory authority to release social security numbers to jury commissioners. Also, I am unaware of any practice of informing an individual when he or she applies to register to vote or obtain a driver's license that the number will be forwarded to jury commissioners. For these various reasons, in the opinion of this office, the State Election Commission is not required or authorized to provide social security numbers on lists of potential jurors.

If there are any questions, please advise.

Sincerely,

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Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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