



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 23, 1995

The Honorable J. Verne Smith
Senator, District No. 5
Post Office Box 528
Greer, South Carolina 29652

RE: Informal Opinion

Dear Senator Smith:

By your letter of August 8, 1995, to Attorney General Condon, you enclosed some correspondence from a constituent and asked for our comment thereon. Referencing a Fourth Circuit Court of Appeals decision, Greidinger v. Davis, 988 F.2d 1344 (4th Cir. 1993), your constituent has inquired as to the requirement in this State that one's Social Security number be furnished by an individual desiring to register to vote. He specifically references the federal Privacy Act of 1974 and expresses his opinion that the current practice in this State violates the federal law in several respects.

I observe that while the Virginia law construed in Greidinger v. Davis is similar to South Carolina's law, there are some distinctions in this State and at least one other law which must also be examined, as well. Each of the relevant laws will be examined, as follows.

Privacy Act of 1974

As to the disclosure of Social Security numbers (SSNs), section 7 of the federal Privacy Act of 1974, Pub.L. 93-579, provided:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided

by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute,
or

(B) 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.

(b) Any 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 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 make an intelligent decision whether to disclose the number, and, with some exceptions, to allow the individual the option to refuse disclosure without repercussions. Yeager v. Hackensack Water, 615 F.Supp. 1087 (D.N.J. 1985); Doyle v. Wilson, 529 F.Supp. 1343 (D.Del. 1982). It appears that disclosure of social security numbers can be made mandatory in certain circumstances under the Privacy Act and perhaps under other laws such as the Social Security Act. Section 7(a) of the federal Privacy Act makes disclosure by an individual of his or her social security number to a state or local government agency mandatory only if the agency required disclosure of the number before January 1, 1975, pursuant to a statute or regulation in order to verify the individual's identity or if disclosure is required by a federal statute. In either circumstance or when the request is made voluntary, rather than mandatory, the local agency must advise the individual from whom the number is being requested and at the time the request is made, whether disclosure of the number is mandatory or voluntary, under what authority the number is requested, and what uses the agency will make of the social security number.

State Election Laws

From a study of prior opinions of this Office and the relevant election laws, it appears that South Carolina has required the furnishing of social security numbers by

applicants who would register to vote, since at least 1967. In Op. Att'y Gen. dated October 16, 1981, it was observed that "[t]he provision in our law requiring the social security number to be placed on the application [for voter registration] has been a part of our law since 1967, Act No. 457 of 1967 and, therefore, predates the 1975 requirement of 5 U.S.C.A. Sec. 552(a)(B). Therefore, if a person has a social security number he is required to place that number on his application." Such a conclusion is in accord with Section 7 (a)(2)(B) of the federal Privacy Act such that the prohibition of Section 7 (a)(1) does not apply with respect to the requirement that social security numbers be furnished by applicants for voter registration in South Carolina.

Currently S.C. Code Ann. §7-5-170 (1994 Cum. Supp.) provides in relevant part:

(1) Written application required. -- No 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 must be open to public inspection.

(2) Form of application. -- The application must be on a form prescribed and provided by the executive director [of the State Election Commission] 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.]

It therefore appears that one must provide a social security number on the application to become a registered voter; it appears, from the plain language of §7-5-170 that information such as one's social security number, as it appears on the voter registration application, would be open to public inspection. I am informed that such is not the case, however, as the State Election Commission itself does not disclose social security numbers and in fact directs the local election commissions to "mask" social security numbers when applications for voter registration are publicly disclosed.

Such policy of nondisclosure is in accord with the statement which appears at the top of the application for voter registration. The statement reads as follows:

Social Security Number is required by the S.C. Code of Laws and is used for internal purposes only. Social Security Number does not appear on any report produced by the State Election Commission nor is it released to any unauthorized individual.

The Honorable J. Verne Smith
Page 4
October 23, 1995

Freedom of Information Act

Section 7-5-170 should also be read with the Freedom of Information Act in mind. Codified at S.C. Code Ann. §30-4-10 et seq., the Act declares that certain matters contained in public records be exempt from disclosure in §30-4-40:

(a) The following matters are exempt from disclosure under the provisions of this chapter:

....

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. ...

This Office advised in Op. Att'y Gen. No. 87-69 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. Swisher v. Department of the Air Force, 459 F. Supp. 337, aff'd 660 F.2d 369 (8th Cir. 1981).

I am of the opinion that the conclusion so stated still represents the state of the law in South Carolina.¹

Right to Privacy

In addition to state law concerns, there are constitutional implications when disclosure of a social security number is sought, the right to privacy being chief among those concerns. The court in Tribune-Review Publishing Company v. Allegheny County Housing Authority, 662 A.2d 677 (Pa. Cmwlth. 1995) recognized that the right to privacy is "one of the most closely guarded treasures of our society." 662 A.2d at 681. The court also recognized that employees have a privacy interest in their social security

¹In Greidinger v. Davis, supra, the Fourth Circuit observed that case law uniformly recognizes that social security numbers "are exempt from disclosure under Exemption 6 of the [federal] Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(6), because their disclosure would 'constitute a clearly unwarranted invasion of privacy.' ..." 988 F.2d at 1354.

numbers, citing to Oliva v. United States, 756 F.Supp. 105 (E.D.N.Y. 1991). Following a discussion of the Privacy Act of 1974, primarily section 7, the court stated:

The purpose of the Privacy Act of 1974 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." Doyle v. Wilson, 529 F.Supp. 1343, 1348 (D.Del. 1982). 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." P.L. 93-579, Senate Report No. 93-1183 at 1974 U.S.C.C.A.N. 6916. Clearly, Congress enacted the Privacy Act with the intent to limit the availability of social security numbers.

Further support for this concept is found in 42 U.S.C. §405(c)(2)(C) (ii), (viii)(I) which refers to the Privacy Act of 1974 and its admonishment to temper the release of social security numbers. Based on the foregoing, we conclude that the Privacy Act of 1974 limits the availability of social security numbers and creates an expectation in the minds of all employees concerning the use and disclosure of their social security numbers. ...

....

We find that the Privacy Act of 1974 restricts the use and disclosure of social security numbers.

662 A.2d 682.

The court further observed:

A social security number is an identifier. It is a necessary tool of business and government, used to transmit information to both the states and federal government. It is a universal identifier permitting access to information personal and private in nature. If stolen it can create a new identity for the thief. When misused it can destroy a life. In this era of computerization, safeguarding one's private records is a paramount concern... .

662 A.2d at 683.

In Greidinger v. Davis, *supra*, the court observed:

Since 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. These are just examples, and our review is by no means exhaustive; we highlight a few to elucidate the egregiousness of the harm.

988 F.2d at 1353-54.

The court in Times Publishing Company, Inc. v. Michel, 633 A.2d 1233 (Pa. Cmwlth. 1993), cited to Greidinger and concluded that "[t]he possibility of disclosing licensees' social security number [sic] indeed raises significant concerns of confidentiality, personal privacy, and personal security." 633 A.2d at 1238. Also citing to Greidinger, the court in State ex rel. Beacon Journal Publishing Company v. City of Akron, 70 Ohio St.3d 605, 640 N.E.2d 164 (1994), stated:

While the release of all city employees' [social security numbers] would provide inquirers with little useful information about the organization of their government, the release of the numbers could allow an inquirer to discover the intimate, personal details of each city employee's life, which are completely irrelevant to the operations of government. As the Greidinger court warned, a person's [social security number] is a device which can quickly be used by the unscrupulous to acquire a tremendous amount of information about a person.

640 N.E.2d at 169. The court detailed testimony both before the court in that case and before the Subcommittee on Social Security of the House of Representatives of Congress to demonstrate the possibilities for invasion of privacy by a pretender's use of another's social security number. The court concluded:

Thanks to the abundance of data bases in the private sector that include the [social security number] of persons listed in their files, an intruder using [a social security number] can quietly discover the intimate details of a victim's personal life without the victim ever knowing of the intrusion.

The Honorable J. Verne Smith

Page 7

October 23, 1995

We find today that the high potential for fraud and victimization caused by the unchecked release of city employee [social security numbers] outweighs the minimal information about governmental processes gained through the release of the social security numbers. Our holding [not to disclose social security numbers of city employees] is not intended to interfere with meritorious investigations conducted by the press, but instead is intended to preserve one of the fundamental principles of American constitutional law--ours is a government of limited power. We conclude that the United States Constitution forbids disclosure under the circumstances of this case. ... [W]e conclude that [relevant Ohio law] does not mandate that the city of Akron disclose the [social security numbers] of all of its employees upon demand.

Id.

Based upon these judicial decisions which have been forthcoming since Op. Att'y Gen. No. 87-69 was rendered, it is apparent that the practice of the State Election Commission and the county election commissions of not disclosing social security numbers of registered voters or applicants to be registered voters comports with the individuals' constitutional right to privacy.

Implications of Greidinger

The Constitution of the State of Virginia required that a citizen of Virginia who would register to vote provide his social security number if registering after July 1, 1971. In attempting to register to vote in 1991, Greidinger refused to disclose his social security number; hence, his application for registration was denied and he was refused the right to vote in the general elections in November 1992. The application did not state whether disclosure of the social security number was mandatory or voluntary, under what authority the social security number was being sought, or to what uses his social security number might be put (i.e., disclosed to political parties or other registered voters). Litigation followed. The District Court denied the relief sought, stating that the provisions of Virginia's statutory scheme concerning voter registration did not violate Greidinger's fundamental right to vote. Greidinger appealed to the Fourth Circuit, his objections being stated as follows by the Fourth Circuit:

He objects to Virginia's permitting registered voters to obtain another registered voter's SSN via §24.1-56, which provides that all registration books, containing all of the registration forms, "shall be opened to the inspection of any qualified voter." He also objects to §24.1-23(8) which allows dissemination of a registered voter's SSN to a candidate for election

or political party nomination, political party committee or official, incumbent office holder, and nonprofit organization which promotes voter participation and registration.

Notably, Greidinger does not challenge Virginia's receipt and internal use of his SSN. He challenges only the dissemination of the SSN to the public pursuant to §24.1-23(8). ... In addition, Greidinger does not assert any constitutional right to privacy in his SSN. Rather, he argues that the privacy interest in his SSN is sufficiently strong that his right to vote cannot be predicated on the disclosure of his SSN to the public or political entities.

988 F.2d at 1348 (emphasis added).

The Fourth Circuit held that

to the extent that §24.1-23(8) and/or §24.1-56 permit the public disclosure of Greidinger's SSN as a condition of his right to vote, it creates an intolerable burden on that right as protected by the First and Fourteenth Amendments. Accordingly, the judgment of the district court is reversed. We remand the case to the district court to give the Commonwealth of Virginia the responsibility to cure this constitutional infirmity by either deleting the requirement that a registrant disclose his SSN or eliminating the use of SSNs in voter registration records open to public inspection and contained in voter registration lists provided to candidates for election, political party committees and officials, incumbent office holders, and nonprofit organizations which promote voter participation and registration. We also remand the case for further proceedings on the Privacy Act notice, which will have to be revised in light of our decision... .

988 F.2d at 1355.

Greidinger is distinguishable from the circumstances surrounding voter registration and disclosure of social security numbers of voters in this State, for several reasons. First, Greidinger did not address the provision of the federal Privacy Act on which South Carolina has relied for many years, section 7(a)(2)(B) which is a grandfathering statute of sorts. Virginia's constitutional provision existed prior to January 1, 1975, just as South Carolina's statutory requirement was in existence prior to that date. Perhaps the Fourth Circuit did not deal with it because no party raised the issue, or perhaps because that court considered the right to vote so fundamental that the grandfathering clause was

The Honorable J. Verne Smith

Page 9

October 23, 1995

felt not to be applicable. In any event, the effect of section 7(a)(2)(B) on the issue is unknown.

The practice in South Carolina relative to disclosure of social security numbers of registered voters is far different from the practice in Virginia. In Virginia, a statute lists the various persons or entities who would be able to receive social security numbers of registered voters. South Carolina does not have such a statute. While South Carolina does have a statute which makes applications for voter registration open to public inspection, it has long been the view of the State Election Commission, as evidenced on the face of the application for voter registration, and county election commissions that disclosure of social security numbers is an unreasonable invasion of personal privacy; thus, those entities "mask" social security numbers when voter registration records are provided to requestors. The face of the application for voter registration indicates that the social security number is used for internal purposes only, that it does not appear on any report produced by the State Election Commission, and that it will not be released to any unauthorized individual. Therefore Greidinger's challenge to the dissemination of his social security number may well not be an issue in this State. To remove any doubt as to disclosure of social security numbers, however, the General Assembly could certainly adopt legislation which would make it clear that social security numbers are not to be disclosed.

I am hopeful that the foregoing explains the practice in South Carolina as to the disclosure of social security numbers by election officials. Please advise if clarification or additional assistance should be necessary.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General