

May 9, 2007

The Honorable John M. Knotts, Jr.
Senator, District No. 23
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Knotts:

In a letter to this office you questioned whether a municipal law enforcement officer may require a driver to provide his or her social security number upon being stopped for a traffic offense.

I am unaware of any State statute requiring that a driver provide his or her social security number after being stopped for a traffic offense. Moreover, based upon my review, the uniform traffic ticket in use in this State for citing for traffic offenses does not specifically provide a place on the ticket where information regarding a social security number may be recorded.

The private nature of social security numbers is recognized by federal law. As stated in a prior opinion of this office dated October 23, 1995,

[i]n 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. See also: Oliva v. United States, 756 F.Supp. 105 (E.D.N.Y. 1991) (individuals generally have a privacy interest in their social security numbers).

As to the disclosure of social security numbers generally, Section 7 of the federal Privacy Act of 1974, Pub.L. 93-579, provides that:

(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.

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It was further provided that

(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.

As indicated in a prior opinion of this office dated June 1, 1999, for the State or local government agency to require disclosure of a social security number, such disclosure would either have to be made pursuant to a federal statute or as part of a statute or regulation existing on January 1, 1975. I am unaware of any relevant federal statute as to drivers stopped for a traffic offense. Similarly, I am unaware of any relevant statute or regulation in existence in this State prior to January 1, 1975 which required the disclosure of a social security number with regard to traffic offenses so as to exempt the disclosure from the requirements of the federal act.

This office in prior opinions has recognized several situations regarding the refusal to disclose a social security number. For instance, an opinion of this office dated March 15, 1979 determined that an individual could not be denied a residential classification for his residence for tax purposes because of that individual's refusal to disclose a social security number. An opinion of this office dated July 5, 1996 concluded that the policy of the Department of Corrections asking for the social security number of a person visiting an inmate conflicted with the federal Privacy Act. As stated in the referenced opinion of this office dated June 1, 1999, "...it is clear that the federal Privacy Act prohibits a person from being forced to reveal his or her social security number unless a specific exception as set forth in the Act is applicable."

As indicated in a prior opinion of this office dated July 5, 1996,

[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 make an intelligent decision whether to disclose the number, and, with some exceptions, to allow the individual the option to refuse disclosure without repercussions...(citing Yeager v. Hackensack Water, 615 F.Supp. 1087 (D.N.J. 1985); Doyle v. Wilson, 529 F.Supp. 1343 (D.Del. 1982))... 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.

As explained by the court in Tribune-Review Publishing Company, *supra*,

[t]he 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.”...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.

662 A.2d 682. The court further noted that the basis to curtail the use of social security numbers is due to the fact that

[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, 988 F.2d 1344 (4th Cir. 1991), the court stated that

[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. 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.

Additionally, having improper access to a social security number and then disclosing such, could as stated in a prior opinion of this office dated October 4, 1995, 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."

As to the enforceability of the federal Privacy Act to a municipal law enforcement agency, as set forth, such legislation applies to any "Federal, State or local government agency." As noted in a prior opinion of this office dated March 28, 2007, this office in prior opinions has presumed its application to State agencies. See, e.g., Op. Atty. Gen. dated June 1, 1999 (stating that the federal Privacy Act prevents the State Department of Natural Resources from requiring social security numbers for watercraft registration); July 5, 1996 (concluding that the State Department of Corrections is prohibited under the federal Privacy Act from requiring social security numbers of individuals visiting inmates in a state prison). Consistent with such, in the opinion of this office, it would be equally applicable to a municipal agency, such as a local police department. As set forth by the Privacy Act, if an officer with a local government agency, such as a police department, was to request a social security number from a driver, the officer is required to "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." As set forth, I am unaware of any statute or other authority which specifically provides for the disclosure of a social security number by a driver when stopped for a routine traffic stop.

Consistent with the above, in the opinion of this office, a municipal law enforcement officer should not routinely require a driver to provide his or her social security number upon being stopped for a traffic offense. To do so could potentially constitute an unreasonable invasion of privacy under this 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. As a result, if a driver was to refuse to provide a social security number, the officer is without discretion with regard to any additional charges. As set forth by the federal Privacy Act, "[i]t shall be unlawful for any...local government agency to deny to any individual any right, benefit, or privilege provided by law because of such

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individual's refusal to disclose his social security account number." Consistent with such, in the opinion of this office, the federal law would prohibit an officer from imposing additional charges based on the refusal of a driver to provide a social security number.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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