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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

May 18, 1999

Mary S. Schroeder, Interim Director  
South Carolina Court Administration  
1015 Sumter Street, Suite 200  
Columbia, South Carolina 29201

**Re: Informal Opinion**

Dear Ms. Schroeder:

You have requested an opinion on behalf of the South Carolina Association of Probate Judges. You seek guidance regarding the amendment of South Carolina Code Sections 20-1-220 and 44-63-75, effective June 10, 1997, as well as the impact of the amended statutes under the South Carolina Freedom of Information Act. Specifically, you provide the following information by way of background:

[t]he amendments were the result of a federal mandate which required that social security numbers be included on certain documents including applications for marriage licenses. The federal law was enacted to enhance the collection of child support. To comply with the federal mandate, the South Carolina General Assembly enacted Act No. 71 of 1997 (R132, S532).

While sections 44-63-75 and 20-1-220 are clear that social security numbers must be included on the application of marriage, section 20-1-220 is vague as to whether or not social security number must appear on the license itself. To comply

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with the amendment of section 44-63-75, DHEC developed a new marriage form. The new form contains the social security numbers of the bride and groom on the original or first copy as well as on the application. This is a matter of great concern to the probate judges. They feel the social security numbers should be on the application only.

The probate judges are also very concerned about the information on the application of marriage, which now includes the parties' social security numbers, being available to the general public under the Freedom of Information Act. Their greatest concern is with canvassers who come into their offices and request to see the marriage applications. These persons are seeking multiple potential customers for insurance and other purposes and do not request a copy of a single application where the social security numbers and other personal information can be removed. The marriage register contains the parties' names and date of the marriage; however, the application includes the date of birth, age, street address, and social security numbers.

Under section 30-4-20(c) "[p]ublic record' includes all books, papers ... or other documentary materials ... in the possession of, or retained by a public body." An opinion issued by the Attorney General's Office in 1985 states "[r]ecords of marriage licenses and applications of Probate Court are public records and are subject to terms of Freedom of Information Act. 1985 Op. Atty. Gen., No. 85-63, p. 173. However, now that applications of marriage contain social security numbers, could the application be excluded from review by the general public under section 30-4-40(a)(2) which exempts "[i]nformation of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy .... "

#### Law / Analysis

S. C. Code Ann. Sec. 20-1-220 provides in pertinent part that

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[n]o marriage license may be issued unless a written application shall have been filed with the probate judge, or in Darlington and Georgetown Counties the clerk of court who issues the license, at least twenty-four hours before its issuance. The application must be signed by both of the contracting parties and shall contain the same information as required for the issuing of the license **including the social security numbers of the contracting parties.** (Emphasis added).

Section 44-63-75 further reads as follows:

(A) Social security numbers must be included in the forms prescribed by the state registrar for:

- (1) the recordation of birth, death, and divorce;
- (2) the application of marriage.

(B) Social security numbers must be recorded on birth and death certificates.

The foregoing state law provisions were enacted by the General Assembly in response to the Welfare Reform Act of 1996 (P. L. 104-193). Public Law 104-193 added, among other provisions, 42 U.S.C. § 666(a)(13) and (a)(16). These provisions require that States, in order to qualify for various types of welfare funding, must have in place a number of procedures to facilitate the collection of overdue child support payments. These procedures include:

42 U.S.C. § 666(a)(13):

Procedures requiring that the social security number of –

(A) any applicant for a professional license, commercial driver's license, occupational license, recreational license, or marriage license be recorded in the application;

42 U.S.C. § 666 (a)(16)

Procedures under which the State has (and uses in appropriate

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cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing ... to comply with subpoenas or warrants relating to paternity or child support proceedings.

The Congressional intent for these requirements is clearly set forth in the statute's legislative history. For example, the Report of the House Ways and Means Committee fully summarizes the goal of Congress, as follows:

#### Present law

Federal law requires that in the administration of any law involving the issuance of a birth certificate, States must require each parent to furnish their Social Security number for the birth records. The State is required to make such numbers available to child support agencies in accordance with Federal or State law. States may not place Social Security numbers directly on birth certificates.

#### Explanation of provision

States must have procedures for recording the Social Security numbers of applicants on the application for professional licenses, commercial drivers' licenses, occupational licenses [now also recreational licenses], or marriage licenses. States must also record Social Security numbers in the records of divorce decrees, child support orders, and paternity determination or acknowledgment orders. Individuals who die will have their Social Security number placed in the records relating to the death and recorded on the death certificate. There are several conforming amendments to title II of the Social Security Act.

#### Reason for change

The Social Security number is the key piece of

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information around which the child support information is constructed. Not only are new hire and support orders at the State and Federal level based on Social Security numbers, but so too are most data searches aimed at locating nonpaying parents. Thus, giving child support offices access to new sources for obtaining Social Security numbers is important to successful functioning of several other components of the committee proposal. **To promote privacy in keeping Social Security numbers confidential, the provision does not require States to place the numbers directly on the face of the licenses, decrees, or orders. Rather, the number must simply be kept in applications and records that, in most cases, are stored in computer files.**

**In requiring use of Social Security numbers, the committee does not intend to alter current law concerning confidentiality of records containing such numbers. Present law provides that Social Security numbers can be used in nonconfidential, public records if those records were nonconfidential and public under State law prior to October 1, 1990. (Emphasis added).**

1996 U.S. Code Congressional and Administrative News, p. 2470.

Based upon the foregoing legislative history, it is obvious that Congress did not intend **to require disclosure** of Social Security numbers on the marriage license itself as opposed to the application for the marriage license. Moreover, it is evident that the issue of whether or not the Social Security number contained in the marriage license application is disclosable to the public at large instead of just to child support enforcement agencies is a matter left to the individual states.

I have located a recent opinion of the Tennessee Attorney General which fully addresses these issues. In Tenn. Op. Atty. Gen. No. 98-065 (March 17, 1998), the Attorney General of that State concluded that Congress meant to require Social Security numbers be included only as to certain license **applications** as opposed to requiring placement of the Social Security number on the license itself. The Attorney General of that State wrote that

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Congress intended that states should have "the broadest possible access to information about parents who owe child support." H.R. Rep. No. 78, 105th Cong., 1st Sess. 1997. The Congress concluded that, "placing Social Security numbers in the records of as many State licenses as possible will increase the number of children who receive child support payments. **At the same time, by placing the numbers on the applications rather than the face of the license itself, this provision strikes a balance between the State need for information and the need for privacy felt by many individuals.**" *Id.*

It is thus clear that Congress sought to protect an individual's privacy by not requiring Social Security numbers to be placed upon the face of the marriage license. Thus, if § 20-1-220 and 44-63-75 are interpreted as independently requiring this placement, such runs the risk of violating the federal Privacy Act, 5 U.S.C.A. §552 (a), which makes it unlawful for any Federal, State or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security number, as well as Art. I, § 10 of the South Carolina Constitution which prohibits unreasonable invasions of personal privacy. *See, McKay v. Altobello*, 1997 WL 266717 (Ed. La. 1997) (federal Privacy Act prohibits requiring use of Social Security number as condition to register to vote); *Neb. Op. Atty. Gen.* No. 94031, 1994 WL 168404 (April 25, 1994) [State cannot deny handgun license for failure to provide Social Security number as part of application]; *S. C. Op. Atty. Gen.* No. 79-52 (March 15, 1979) [person may not be denied a residential classification because of such person's refusal to disclose his Social Security number]; *Op. Atty. Gen.*, July 5, 1996 [Dept. of Correction's policy of requiring Social Security number of person wishing to visit an inmate conflicted with federal Privacy Act].<sup>1</sup>

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The Privacy Act (5 U.S.C.A. § 552(a)) reads as follows:

(a)(1) it shall be unlawful for any Federal, State or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number.

(2) The provisions of paragraph (1) of this subchapter shall not apply with respect to –

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Thus, in my judgment, these State statutes should not be interpreted as going so far as requiring that a person's Social Security number be placed on the marriage license itself as opposed to being included as part of the marriage license application, because this may be in contravention of the federal Privacy Act as well as the other referenced provisions of federal law and the State Constitution.

Further, the Tennessee Attorney General addressed the issue of whether Social Security numbers had to be made public in addition to being required to be submitted as part of the marriage license application. The Attorney General concluded that Congress did not mandate disclosure of these Social Security numbers to the public, writing that

(f)ederal law now requires the states to adopt procedures to record social security numbers on all marriage license applications, and for other specified licenses issued by the states, as part of comprehensive legislation to achieve efficient collections of child support obligations. Collection and Use of

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(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 statute was required under state or regulation adopted prior to such date to verify the identification of the individual.

Furthermore, subsequent federal law has made social security numbers confidential in certain instances even where required to be provided by federal law. 42 U.S.C. § 405 (c)(2)(c)(ii) provides that "Social Security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990 shall be deemed confidential, and no authorized person shall disclose any such social security number or related record."

Thus, if Congress went out of its way to avoid placement of the Social Security number on the face of the license, in view of the foregoing provisions, such independent placement by the State could be deemed to be in conflict with the Privacy Act.

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Social Security Numbers for Use in Child Support Enforcement, Pub. L. No. 105-33, § 5536, 111 Stat. 629, amending 42 U.S.C. § 666(a)(13) (Supp. 1997). This statute provides that, "each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part: ... Procedures requiring that the social security number of ... any applicant for a professional license, driver's license, occupational license, recreational license or marriage license be recorded on the application."

Despite this required disclosure, 42 U.S.C. § 666(a)(13) also provides: "if a State allows the use of a number other than the social security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants." States are required to keep the disclosed social security numbers on file and to provide them to child support enforcement agencies for enforcement purposes, including sequestering social security reimbursements and withholding or suspending drivers' licenses of parents who do not comply with child support orders. 42 U.S.C. § 666(a)(3)(C) & (a)(16) (Supp. 1997). **From the above statutory language it appears that states may elect whether or not to make the numbers on the applications public.** (Emphasis added).

Thus, as the Tennessee Attorney General has concluded, Congress left it to the individual states to determine whether or not the Social Security number submitted as part of a marriage license application is public information. As you indicate, this requires reference to the South Carolina Freedom of Information Act, S. C. Code Ann. Sec. 30-4-10 et seq.

In an Informal Opinion, dated October 4, 1995, we concluded that disclosure of a person's Social Security number was probably **not required** by the Freedom of Information Act. There, it was stated that

Section 30-4-40(a)(2) exempts from disclosure "[i]nformation



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of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy...." ... **I am of the opinion 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 ...** [Emphasis added].

In that same opinion, we quoted from the Fourth Circuit's opinion in Greidinger v. Davis, 988 F.2d 1344 (4th Cir. 1993). There, 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. 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." Accordingly, it is my opinion that 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 as part of a marriage license application. See, S.C. Const., Art. I, § 10 [which protects against unreasonable invasions of privacy].

Instead, such public disclosure would be a decision to be made by the individual custodian of the marriage license records. The Freedom of Information Act has never mandated nondisclosure, even where a particular exception is applicable. See, Op. Atty. Gen., September 24, 1996, referencing Bellamy v. Brown, 305 S. C. 291, 295, 408 S.E.2d 219, 221 (1991). [Freedom of Information Act "does not create a duty not to disclose."]. The Act was recently amended expressly to reflect that intent. Section 30-4-40 (1) now states clearly that "[a] public body may but is not required to exempt from disclosure...." Thus, the custodian of marriage license records will have to weigh whether to disclose

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Social Security number, based upon consideration that such disclosure could constitute an unreasonable invasion of personal versus the possible need for such information for child support enforcement. Considering the intent of Congress, such balance, except in extraordinary circumstances, lies with protecting the privacy of the individual citizen.

### Conclusion

In conclusion, I agree with the Probate Judges that an individual's Social Security number is not required to be placed on the face of the marriage license; instead, the Social Security number is required by the Welfare Reform Act of 1996 to be submitted as part of the marriage license application. In view of the fact that Congress sought to protect privacy by not requiring Social Security numbers to be put on the marriage license itself, any interpretation of §§ 20-1-220 and 44-63-75 which independently requires this placement runs the risk of violation of the federal Privacy Act as well as Art. I § 10 of the South Carolina Constitution.

I also agree that Congress has not required **public disclosure** of such Social Security numbers as part of marriage license applications as opposed to submission to and use by child support enforcement officials. Congress has left the decision of public disclosure to the individual states.

The South Carolina Freedom of Information Act authorizes the nondisclosure of these Social Security numbers pursuant to § 30-4-40 (a)(2) which exempts disclosure of records where such would constitute the "unreasonable invasion of personal privacy." This office has previously concluded that Social Security numbers would fall within this exemption and thus, a Social Security number could be withheld from disclosure to the public.

While Social Security numbers (as opposed to the rest of the marriage license application) are exempt under the Freedom of Information Act, the Act does not **require** withholding of even this exempt material from public disclosure. Instead, the Freedom of Information Act leaves this decision to the records custodian. Thus, the custodian of marriage records would have to make the judgment call as to whether or not he or she wishes to disclose Social Security numbers as part of the marriage license application to the public, weighing criteria such as the fact that such disclosure could constitute an unreasonable invasion of personal privacy against the need for the Social Security number by a member of the public for child enforcement purposes. Considering the intent of Congress that privacy be preserved, such balance should, except in extraordinary

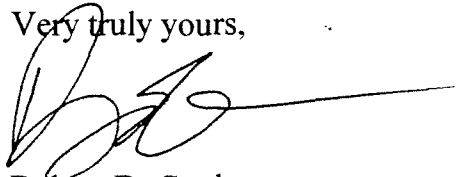
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circumstances, lie with protecting the privacy of the individual citizen.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDC', with a long horizontal line extending to the right.

Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph