



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 4, 1995

Nancy Bloodgood, Esquire
Deputy County Attorney
County of Charleston
2 Courthouse Square, Room 401
Charleston, South Carolina 29401-2263

RE: Informal Opinion

Dear Ms. Bloodgood:

By your letter of September 11, 1995, to Attorney General Condon, you have sought an opinion concerning the dissemination of social security numbers which appear in documents in the office of the Clerk of Court.

You have advised that the Clerk of Court in Charleston County has recently implemented a system at the Courthouse whereby members of the legal profession (or any other members of the public) may pay a minimal charge to access all public information on the Court's computers in their private offices. This system is referred to as the "Clerk of Court's Public Access System." Examples of the types of accessible information include judgments, Circuit Court dockets, pleadings, and lis pendens. All of the information available on the system can also be obtained by simply appearing in person at the office of the Clerk of Court.

You have further advised that this information often contains individuals' social security numbers because it comes from law enforcement agencies and social security numbers are often used to identify persons. Social security numbers also appear on arrest warrants, on various forms approved by the Attorney General's office, on judgment transcripts, and even on court orders prepared by attorneys. In no event does the Clerk of Court herself solicit social security numbers, but she does routinely file the information received in such a way that the social security numbers are available to the public.

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You have recognized that federal law makes it unlawful for a local agency maintaining a system of records to disclose social security numbers for the purpose of establishing individuals' identification unless certain circumstances exist. You therefore have asked whether the Clerk of Court can disseminate to the public social security numbers that appear in her public records, either at her office or by means of her new computerized Public Access System, or must she require that social security numbers be redacted prior to dissemination?

For purposes of this informal opinion it is assumed that the documents which are being disclosed are "public records," as defined by S.C. Code Ann. §30-4-20(c), a part of the Freedom of Information Act, §30-4-10 et seq., and further assumed that it has been determined that no exemptions would be generally applicable to prevent the disclosure of the records as a whole. It is further assumed that the federal Privacy Act of 1974 has been complied with in the collection of social security numbers. There is one statute which requires consideration, however: §30-4-40(a)(2), which enumerates one of the matters exempt from disclosure under the Freedom of Information Act.

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... ." In addition, §30-4-40(a)(4) exempts from disclosure "[m]atters specifically exempted from disclosure by statute or law." Based on the review of several judicial decisions concerning the disclosure of social security numbers, 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, as well as constituting a violation of the federal Privacy Act of 1974 and the constitutionally protected right to privacy.

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 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

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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 at 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, 988 F.2d 1344 (4th Cir. 1993), 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

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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 numbers] 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.

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 circumstanc-

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es 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 on the foregoing, I am of the opinion that records of the office of the Clerk of Court which are to be disclosed to any segment of the public, which records contain social security numbers of individuals, should have the social security numbers redacted prior to disclosure. I am of the opinion that to disclose social security numbers of individuals would likely violate the constitutionally protected right to privacy and the federal Privacy Act of 1974, and that such information could easily be said to be exempt from disclosure under §30-4-40(a)(2), as the disclosure would, based on the judicial decisions cited above, certainly be an unreasonable invasion of privacy; further, the federal Privacy Act as discussed above would protect the information, thus implicating §30-4-40(a)(4) of the Freedom of Information Act.

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. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General