



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 5, 1996

The Honorable Glenn G. Reese
Senator, District No. 11
117 Sun Valley Drive
Inman, South Carolina 29349

Dear Senator Reese:

By your letter of May 15, 1996, to the Office of Attorney General Condon, you have sought an opinion as to whether it is legal for the South Carolina Department of Corrections to ask for a social security number of a person who is visiting an inmate in one of the State's prisons.¹ To respond to your inquiry, it is necessary to examine the federal 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

¹I am advised that the Department of Corrections requests social security numbers from visitors to inmates to use as identifying information. The numbers are apparently not used to make security checks on the visitors or for other such purposes.

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(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.

I have been advised that the policy of the Department of Corrections that visitors to inmates in the State's correctional facilities was not in effect on January 1, 1975. I have not located a statute or regulation concerning the providing of social security numbers by those who wish to visit such inmates. It would appear that the federal Privacy Act would require the Department of Corrections to advise potential visitors as to whether disclosure of social security numbers would be mandatory or voluntary (as the case may be), by what statutory or other authority the number is being requested, and to what uses the social security number will be put. I am not aware of a federal statute which would be applicable in this instance. Because neither of the two exceptions specified in section 7(a)(2) would appear to be applicable to this situation, section (a)(1)

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of the federal Privacy Act would make it unlawful for an agency of state government 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."

In addition to concerns raised relative to the federal Privacy Act, there are constitutional implications when the disclosure of a social security number is sought, the right to privacy being chief among those concerns. The various judicial decisions which have considered the disclosure of social security numbers vis a vis the right to privacy are summarized in an informal opinion of this Office dated October 23, 1996, a copy of which is enclosed. Depending on the uses to which the visitors' social security numbers may be put and whether the Department of Corrections allows those numbers to be disclosed (as under a statute such as the State's Freedom of Information Act), the visitors' constitutional right to privacy may, or may not, be implicated.

In conclusion and to summarize the foregoing, I am of the opinion that the federal Privacy Act requires that the Department of Corrections, in requesting that a visitor to an inmate in a State prison give his or her social security number for identification, advise that visitor whether the disclosure of the social security number is mandatory or voluntary, by what statutory or other authority the social security number is being solicited, and to what uses the social security number will be put. Because the exceptions specified in section 7(a)(2) of the federal Privacy Act do not appear to be applicable here, then the right, benefit, or privilege² of visiting an inmate should not be denied by the Department of Corrections because a visitor has refused to disclose his or her social security number.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General


(Continued on next page)

²I am not aware of any statute or constitutional provision creating a right for one to visit an inmate. I am assuming for purposes of this opinion that visiting an inmate in a state's prison would be considered a privilege.

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Enclosure

REVIEWED AND APPROVED BY:


Leb C. Williams, III
Deputy Attorney General