

1977 WL 46011 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1977

MEMORANDUM

Re: Legislative Audit Council's Request for Information on the Potential Conflicts between the Right of Privacy and the Public's Right to Know with Reference to the Proposed Central Computer File of Welfare Recipients' Records

*1 Mr. Beighley

QUESTION PRESENTED: What are the ramifications of the use of a central computer file of the records of the state's welfare recipients on their individual right of privacy, particularly with regard to the effect of the Freedom of Information Act and the disclosure of public records?

DISCUSSION:

The questions presented by the development of a central computer file of the records of state welfare recipients and its impact on individual privacy are numerous and can only be answered in light of concrete cases and controversies which present specific situations of disclosure of such recorded information for particular purposes, and not through a general inquiry. Furthermore, as the Report of the Secretary of Health, Education and Welfare's Advisory Committee on Automated Personal Data Systems has noted, "There is little evidence, . . . , that court decisions will, either by invoking Constitutional rights or defining common law principles, evolve general rules, framed in terms of a legal concept of personal privacy, that will protect individuals against the potential adverse effects of personal-data record-keeping practices." R.N. Freed, Computers & Law: A Reference Work, 4th ed., 34. Therefore, this opinion will be limited to a consideration of the overall notion of confidentiality of records of recipients of public welfare and these individuals' rights to regulate disclosure of this information.

The annotation at [54 A.L.R. 3d 768](#), "Confidentiality of Records as to Recipients of Public Welfare" comments at the outset that administering welfare funds necessarily involves the collecting of personal information. It further notes that limiting of access to such information to protect the recipients' personal privacy is generally governed by statutory regulations adopted by each state for the collection and dispersal of these data. In South Carolina, 1976 Code of Laws §§ 43-1-150, 43-1-160, and 30-3-10 et seq. provide these rules. Section 43-1-150 prescribes the state Department of Social Services as the custodian of the records, papers, files and communications of the state and county Departments of Social Services and requires it to make and enforce "reasonable" rules governing the use and preservation of these files. Section 43-1-160 makes the names of recipients and the amount of welfare monies which they receive "public records" and therefore open to "public inspection" according to the state Freedom of Information Act (i.e. §30-3-10 et seq.), and it also makes criminal the use of lists of recipients for commercial or political purposes. It is the "reasonable" rules for use and preservation of the files which are made by the state Department that are subject to challenge as not effectively protecting the right of privacy. To determine the reasonableness of disclosure of such information, several questions should be answered: (1) To whom are the records to be given? (2) For what purpose will the person or group be using the files? (3) Under what circumstances is the state Department being asked to release the records? The A.L.R. annotation presented several cases in which access to welfare files was or wasn't granted, and it is appropriate to consider these fact situations in light of the above questions.

*2 In [Bell v. Bankers Life & Casualty Co. \(1945\)](#), 327 Ill. App. 321, 64 N.E.2d 204, a statute which strictly forbade voluntary disclosure was held not to apply to involuntary disclosure by subpoena. In that case, the insurance company was seeking the recipient's birthday as he listed it on his welfare records to be used in countering a claim which he had made against the company.

Several other similar cases are cited in which confidential files are subpoenaed and disclosure is successfully sought for the purpose of civil litigation.

However, in jurisdictions wherein the disclosure statute forbade the issuance of a subpoena for such information unless the litigation was directly connected with the administration of welfare assistance, the courts have generally denied access to the files.

In [State v. Lender \(1963\)](#), 266 Minn. 561, 124 N.W.2d 355, welfare files were sought by the defendant in an action to determine the paternity of an illegitimate child. The statute, similar to the one in South Carolina, forbade disclosure when such release would be detrimental to the public interest. But the court allowed the defendant access to the files. However, where the disclosure regulation forbade release except to the public officials specifically set down in the statute, access was denied to a paternity defendant.

Courts have ruled both for and against disclosure in situations where welfare records were sought for use in criminal actions. [State ex rel. State v. Church \(1949\)](#), 35 Wash. 2d 170, 211 P.2d 701, is a case wherein the defendant was granted access. The disclosure statute in that situation prohibited voluntary release to all but officials directly connected with the welfare program. However, the courts have denied access to criminal defendants where the disclosure statute forbade any release of such files for any use except purposes directly connected with welfare administration.

The annotation cites one case in which a recipient was denied access to view her own file. In that situation, the statute provided that all such files were confidential. Taxpayers seeking to inspect welfare records have also been denied access [see [Coopersberg v. Taylor \(1933\)](#) 148 Misc. 824, 266 N.Y.S 359, under a statute similar to South Carolina's]. However, under a disclosure statute requiring persons having custody of public records to allow the public inspection at reasonable times, a taxpayer was granted permission to view welfare files, with the exception of old age and dependent children recipients who were statutorily exempted.

Access to welfare files by other public officials and groups has been granted in situations wherein the entity sought the files for investigatory or planning purposes. In those cases, the public officials were not statutorily excluded from the group of persons allowed access, however.

From examining these cases it is clear that the courts have carefully considered the before mentioned questions in light of the states' disclosure statutes to determine the reasonableness of allowing release of welfare files. It would be appropriate, therefore, for the state Department to use those questions as guidelines in setting its regulations for disclosure.

*3 Finally, with the development of the central computer file, additional safeguards to protect the recipients' right of privacy must be instituted. Helpful guidelines and suggestions for administering such a central file are provided in the Department of Health, Education, and Welfare's [Handbook of Public Assistance Administration](#), as well as numerous law review articles, e.g. "Computerization of Welfare Recipients: Implications for the Individual and the Right to Privacy," 68 [Rutgers Journal of Computers & Law](#) 433. Many of these safeguards are technological in nature which a computer specialist would be more qualified to discuss. However, they would certainly include a "password" system which would be changed periodically for additional security. Such a system requires the introduction of a particular key word to allow access into the various levels of the data banks. For example, one password might be required to allow access to the list of recipients, another key word to get to the amount of aid each receives, still another password for other personal information, etc. Thus only those directly connected with the Department's computer operation staff would have such complete access to personal files. Another security mechanism is the "verification" system, which allows the main computer operator to check and verify both input and printout from the terminals. One non-technological device which must be developed, if it has not been instituted already, would be a "need-to-know" limitation of access ladder. Such a ladder of groups and individuals who need access to various sections of the welfare files would clarify for the operator which levels of the data bank he should make available to them.

CONCLUSION:

The express purpose of the legislature in proposing the development of the central computer file of state welfare recipients' records is to make this information more readily available to those people who are currently authorized to have access to the files, and not to expand that group of people. Therefore, as long as the above mentioned security measures are taken and statutory requirements are followed, this new program should present no new problems with disclosure and invasion of privacy. Should the Department of Social Services expand accessibility to new groups, however, each individual situation would have to be scrutinized and balanced with the accompanying intrusion into personal privacy to determine the reasonableness of such an expansion.

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