

Authorities of law for Social Security Numbers

3.a. West's U.S.C.A. is a reference set published by WEST GROUP covering the general and permanent laws of the United States.

3.b. Title 42 of West's U.S.C.A. is entitled THE PUBLIC HEALTH AND WELFARE.

3.c. Title 42, U.S.C.A., §§ 301 et seq. is the codification of laws relating to Social Security and The Social Security Administration.

4.a. 42 U.S.C.A. (2002), § 405(c)(2)(C)(i) reads (emphasis added):

(c)(i) It is the policy of the United States that any State (or political subdivision thereof may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of the individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

4.b. 42 U.S.C.A. (2002), § 405(c)(2)(C)(vi) reads (emphasis added):

(vi) For purposes of clause (i) of this subparagraph, an agency of a state (or political subdivision thereof) charged with the administration of any general assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security account number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of subchapter IV of this chapter or an agency operating pursuant to the provisions of part D of such subchapter.

4.c. 42 U.S.C.A. (2002), § 405(c)(2)(C)(vii) reads (emphasis added):

(vii) For the purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

5.a. 42 U.S.C.A. (2002), § 405(c)(2)(E) reads (in part, emphasis added):

(E)(i) It is the policy of the United States that--

(I) any State (or any political subdivision of a State) may utilize the social security

account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and (II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) the additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

...

(iv) For the purposes of this subparagraph, the term "State" has the meaning such term has in subparagraph (D).

5.b. 42 U.S.C.A. (2002), § 405(c)(2)(D)(iii)(II) reads:

(iii) For the purposes of this subparagraph--

(I) ...

(II) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

6.a. 42 U.S.C.A. (2002), § 405(g) reads (emphasis added):

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. ...

6.b. 42 U.S.C.A. (2002), § 405, note 612, suggests that 42 U.S.C.A., § 405(g) constitutes a waiver of sovereign immunity and cites to *Hule v. Bowen*, C.A.11 (Ala.) 1986, 788 F.2d. 698; *Wright v. Califano*, C.A. Ill. 1979, 603 F.2d 666, cert. den. 100 S.Ct. 2999, 447 U.S. 911, 64 L.Ed.2d 862 and older cases.

7. The CFR, PARALLEL TABLE OF AUTHORITIES AND RULES (a href="http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html">http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html [as of November 2, 2002]) lists the following Regulations as relating to 42 U.S.C. 405:

405.....20 Parts 401, 402, 404, 422 42 Parts 405, 1005, 1006
405 note.....20 Part 404

8.a. 20 CFR 401.25 reads (in part, emphasis added)

Sec. 401.25 Terms defined.

...

Social Security Administration () means (1) that Federal agency which has administrative responsibilities under titles, I, II, X, XI, XIV, XVI and XVIII of the Act; and (2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

8.b. 20 CFR 401.30 reads (in part, emphasis added)

Sec. 402.30 Definitions. As used in this part,

Agency means any executive department, military department, government corporation, **government controlled corporation, or other establishment in the executive branch of the Federal Government**, or any independent regulatory agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of SSA or its agents. Solely for the purpose of disclosure under the FOIA, we consider records of individual beneficiaries located in the state Disability Determination Services (DDS) to be agency records.

...

Freedom of Information Act of FOIA means 5 U.S.C. 552.

...

9.a. UNITED STATES GOVERNMENT MANUAL (2001-2002), CONTENTS, pp. vi-vii, lists Social Security Administration in the section entitled Independent Establishments and Government Corporations.

9.b. UNITED STATES GOVERNMENT MANUAL (2001-2002), SOCIAL SECURITY ADMINISTRATION, p. 530, reads (in part):

SOCIAL SECURITY ADMINISTRATION
6401 Security Boulevard, Baltimore, MD 21235

9.c. UNITED STATES GOVERNMENT MANUAL (2001-2002), SOCIAL SECURITY ADMINISTRATION, p. 531, reads (in part):

The Social Security Administration (SSA) was established by Reorganization Plan No. 2 of 1946 (5 U.S.C. app), effective July 16, 1946. It became an independent agency in the executive branch by the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 901), effective March 31, 1995. **WOW NOT IN 1933**

9.d. 2002 NATIONAL 5-DIGIT ZIP CODE AND POST OFFICE DIRECTORY, VOLUME 1, DISTRICT OF COLUMBIA, map, p. 3-670, and LIST OF POST OFFICES, p. 3-671, and MARYLAND, map, p. 3-1498, and LIST OF POST OFFICES, pp. 3-1499-3-1500, when read together, clearly show that BALTIMORE MD is not in DISTRICT OF COLUMBIA, nor is DISTRICT OF COLUMBIA in BALTIMORE MD.

10.a. 20 CFR 404.2 reads (in part, emphasis added)

Sec. 404.2 General definitions and use of terms.

(a) Terms relating to the Act and regulations. (1) The Act means the social Security Act, as amended (42 U.S.C chapter 7).

(2) section means a section of the regulations in part 404 of this chapter unless the context indicates otherwise.

...

(c) Miscellaneous. (1) Certify, when used in connection with the duty imposed by the Administration by section 205(i) of the act, means that action taken by the Administration in the form of a written statement addressed to the Managing Trustee, setting forth the name and address of the person to whom payment of a benefit or lump sum, or any part thereof, is to be made, the amount to be paid, and the time at which payment should be made.

...

(5) State, unless otherwise indicated, includes (i) the District of Columbia, (ii) the Virgin Islands, (iii) the Commonwealth of Puerto Rico effective January 1, 1951, (iv) Guam and American Samoa, effective September 13, 1960, generally, and for the purposes of sections 210(a) and 211 of the act effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income, and (v) the Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively when those territories acquired statehood.

(6) **United States**, when used in a **geographical sense**, includes, unless otherwise indicated, (i) **the States**, (ii) **the Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when they acquired statehood**, (iii) **the**

District

of Columbia, (iv) the Virgin Islands, (v) the Commonwealth of Puerto Rico effective January 1, 1951, and (vi) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of section 210(a) and 211 of the act, effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income.

10.b. 20 CFR 404.102 reads (in part, emphasis added)

Sec. 404.102 Definitions.

...

We, our, and us means the Social Security Administration.

You or your means the worker whose insured status is being considered.
11. 20 CFR 422.103 reads (in part, emphasis added)

Sec. 422.103 Social security numbers.

...

(b)(2) **Birth registration document.** SSA may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as a part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a form SS-5 and may request that SSA assign a social security number to the newborn child.

...

(d) Social security number cards. A person who is assigned a social security number will receive a social security number card from SSA within a reasonable time after the number has been assigned. (See Sec. 422.104 regarding the assignment of social security number cards to aliens.) Social security number cards are the property of SSA and must be returned upon request.

TITLE 42 § 408

(a) In general

Whoever—

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

Shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

§ 1983. Civil action for deprivation of rights

TITLE 42 > CHAPTER 21 > SUBCHAPTER I > § 1983

How Current is This?

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Office of the Attorney General

State of Texas

January 27, 1994

Honorable William R. Ratliff
Chair

Senate Education Committee

P.O. Box 12068

Austin, Texas 78711

Opinion No. DM-286

Re: Authority of a state licensing agency to require the disclosure of social security numbers (RQ-614)

Dear Senator Ratliff:

You state that you request "clarification of the law relating to the disclosure of social security numbers." By way of background, you explain that the Texas Real Estate Commission (the "commission") has requested the social security number ("SSN") of an individual who is licensed by the commission. The licensee has objected to providing his SSN on the grounds that section 7 of the federal Privacy Act of 1974 prohibits state agencies from denying an individual any "right, benefit, or privilege" for refusing to divulge his or her SSN. See 5 U.S.C. § 552a note (Act of Dec. 31, 1974, P.L. 93-579, § 7, 88 Stat. 1909).

Section 7 of the Privacy Act of 1974 provides:

(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

(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. [Footnote added.]

Section 7 has been interpreted by federal courts to absolutely prohibit any federal, state or local government agency from denying an individual any right, benefit or privilege provided by law for refusing to disclose his or her SSN, except in the limited circumstances delineated in subsection (a)(2). See, e.g., *Greidinger v. Davis*, 988 F.2d 1344, 1353 (4th Cir. 1993) ("This Act makes it unlawful for a governmental agency to deny a right, benefit, or privilege merely because the individual refuses to disclose his SSN"); *Doyle v. Wilson*, 529 F. Supp. 1343, 1348 (D. Del. 1982) ("Section 7 of the Privacy Act broadly prohibits a state from penalizing an individual in any way because of his failure to reveal his social security number upon request, except in certain narrowly defined circumstances"). It has also been interpreted to require such government agencies to provide certain information when requesting an individual to disclose his or her SSN.

See, e.g., Greidinger, 988 F.2d at 1353; Doyle, 529 F. Supp. At 1349 (section 7(b) requires a government agency to disclose whether the disclosure is mandatory or voluntary, by what statute or other authority the SSN is solicited, and what uses will be made of it).

Your inquiry requires us to first consider whether the commission's request for the licensee's SSN falls within any of the exceptions set forth in subsection (a)(2) of section 7. If it is so excepted, then the licensee's refusal to provide his SSN may be a basis for denying a right, benefit or privilege, in this case the renewal of his license. Your inquiry also requires us to consider whether a government agency's request for an SSN which is excepted under subsection (a)(2) must be nevertheless accompanied by the information set forth in subsection (b).

Subsection (a)(2)(A) of section 7 permits a government agency to require disclosure of an SSN only if the disclosure is required by a federal statute, such as selective services laws, see *Wolman v. United States*, 542 F. Supp. 84 (D.D.C. 1982), and the Aid to Families with Dependent Children provisions of the Social Security Act, see *McElrath v. Califano*, 615 F.2d 434 (7th Cir. 1980), for example. Subsection (a)(2)(B) permits a government agency to require disclosure of an SSN only if (i) the agency requires the disclosure as part of its maintenance of a system of records in existence and operating before January 1, 1975 and (ii) the disclosure was required under a statute or regulation adopted prior to that date to verify the identity of an individual. To fall within this exception, it is not sufficient that an agency followed a practice of collecting SSNs prior to January 1, 1975, unless a statute or regulation required the practice in direct terms. *Doyle*, 529 F. Supp. at 1349 ("Administrative practice alone, however, unsupported by any discrete legal grant of authority, is not enough to satisfy the requirements of section 7(a)") (citing *Wolman v. United States*, 501 F. Supp. 310, 311 (D.D.C. 1980)).

The subsection (a)(2)(B) exception has been expanded in effect by a 1976 amendment to the Social Security Act which provides in pertinent part:

(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual [to furnish such social security account number].

.....

(v) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security number account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above

42 U.S.C. § 405(c)(2)(C). Thus, under this provision, a government agency may require the disclosure of an SSN in the "administration of any tax, general public assistance, driver's license, or motor vehicle registration law" even if the government agency did not use SSNs for identification purposes under a statute or regulation adopted prior to January 1, 1975. See *Doyle*, 529 F. Supp. at 1349.

Whether the commission may require a licensee to disclose his or her SSN depends upon whether the disclosure falls within one of the exceptions set forth in section 7(a)(2) of the Privacy Act of 1974, or the foregoing provision of the Social Security Act. In a letter to the licensee, the commission indicates that it is required to obtain licensees' SSNs by section 57.491 of the

Education Code, a provision adopted in 1989 by the 71st Legislature. See Acts 1989, 71st Leg., ch. 985, § 16, at 4063, 4068. Generally, section 57.491 provides that a state agency such as the commission may not renew the license of a licensee who is in default on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation unless the licensee either pays the guaranteed student loan or enters into a repayment agreement on the defaulted loan. To comply with the mandate of section

57.491, the commission has adopted an administrative rule which provides in pertinent part as follows:

Renewals of licenses issued by the commission are subject to the policies established by the Texas Education Code, § 57.491. Before the commission declines to renew a license due to a default on a loan . . . the commission shall give notice and provide an opportunity for a hearing . . . The commission shall advise licensees in renewal notices and license application forms that default on a loan guaranteed by the [Texas Guaranteed Student Loan Corporation] may prevent a subsequent renewal of a license.

22 T.A.C. § 535.95(c).

We are unaware of any federal statute that requires state licensing agencies such as the commission to require licensees to disclose their SSNs. The Texas Guaranteed Student Loan Corporation guarantees loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under the federal Higher Education Act of 1965, 20 U.S.C. § 1001 et seq. See Educ. Code § 57.41. The federal provisions governing guaranteed student loans, see generally 20 U.S.C. § 1070a et seq. (Subchapter IV-Student Assistance), require borrowers to disclose their SSNs when they apply for loans and when they leave school. See 20 U.S.C. §§ 1091(a)(4) (requiring borrower to provide SSN to school or lender), 1091(q) (requiring secretary of education to verify student SSN), 1092(b)(2)(A)(iv) (requiring borrower to notify school or lender of any change in SSN upon leaving school). But we have been unable to identify any federal provision requiring state licensing agencies, such as the commission, to require licensees to disclose their SSNs. Therefore, it is not apparent to us that the commission's request for licensees' SSNs is excepted by section 7(a)(2)(A) of the Privacy Act of 1974.

Furthermore, we have no basis for concluding that the disclosure is excepted by section 7(a)(2)(B) of the Privacy Act of 1974 or the 1976 amendments to the Social Security Act. With respect to the 1976 amendments to the Social Security Act, it is obvious that the commission does not require the disclosure of SSNs as part of the "administration of any tax, general public assistance, driver's license, or motor vehicle registration law." Therefore, the disclosure does not fall within the exception created by the 1976 amendments to the Social Security Act. With respect to section 7(a)(2)(B), neither section 57.491 of the Education Code nor the commission's rule expressly requires the disclosure of a licensee's SSN to renew a license. Moreover, neither provision was adopted prior to January 1, 1975 to verify the identity of an individual. Therefore, these provisions do not bring the disclosure within the section 7(a)(2)(B) exception.

Although the commission's stated justification does not satisfy the section 7(a)(2)(B) exception, we cannot rule out the possibility that the commission may be able to demonstrate that it requires the disclosure of SSNs as part of a system of records that was in existence and operating before January 1, 1975, under some other statute or regulation that was adopted prior to that date to verify the identity of an individual. The commission has been in existence since 1949, and has had the authority to issue and renew licenses since that time. See Acts 1949, 51st Leg., ch. 149, § 1, at 304. If the commission required the disclosure of SSNs as part of its system of records in

existence and operating before January 1, 1975, under such a statute or regulation, then the commission is not prohibited under section 7 of the Privacy Act of 1974 from refusing to renew a license on the basis of a licensee's refusal to disclose his or her SSN.

With respect to the second issue, you suggest that the commission and the licensee disagree over the relationship between subsections (a) and (b) of section 7 of the Privacy Act of 1974.

Apparently, the commission asserts that subsection (b) is inapplicable when an agency requires the disclosure of an SSN under one of the exceptions listed in subsection (a)(2). The licensee, however, insists that subsection (b) must be read together with the prohibition found in subsection (a).

We agree with the licensee's position. The two subsections have repeatedly been read together to require the disclosure mandated in subsection (b) even when the disclosure falls within one of the exceptions to the prohibition set forth in subsection (a). See, e.g., *Greidinger v. Davis*, 782 F. Supp. 1106 (E.D. Va. 1992), rev'd and remanded on other grounds, 988 F.2d 1344 (4th Cir. 1993); *Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087 (D.N.J. 1985); *Doyle*, 529 F. Supp. 1343 supra. In *Greidinger*, 782 F. Supp. 1106, for example, the state of Virginia requested individuals to disclose their SSNs as a prerequisite to registering to vote. This disclosure was exempt under section 7(a)(2)(B) of the act, but the state was still required to comply with section 7(b). The court in *Yeager*, 615 F. Supp. 1087, stated "the disclosure of social security numbers cannot be compelled without compliance with section 7(b) of the Privacy Act." 615 F. Supp. at 1091. Similarly, in *Doyle*, 529 F. Supp. 1343, the court noted that even if the Delaware Treasurer's practice of requiring the disclosure of SSNs was excepted by the 1976 amendments to the Social Security Act, it doubted "that in requiring the disclosure of social security numbers as a matter of course, the State Treasurer has complied with the requirements of section 7(b)." *Doyle*, 529 F. Supp. at 1350. The court further explained, "adequate explanations of the information required by section 7(b) is critical to the right afforded by section 7(a) to withhold disclosure of the social security number, except in limited circumstances." *Id.*

We do not decide here whether the letter provided to the licensee by the commission comports with the requirements of section 7(b). We do suggest, however, that the commission might want to review the information it provides to licensees regarding the disclosure of SSNs in light of the foregoing authorities. See authorities cited supra; see also *Wolman*, 501 F. Supp. at 312 (declaring form requiring the disclosure of an SSN unlawful to the extent that it stated that disclosure was mandatory when no law provided for mandatory disclosure); *Greater Cleveland Welfare Rights Org. v. Bauer*, 462 F. Supp. 1313, 1321 (N.D. Ohio 1978) (concluding that section 7(b) requires meaningful disclosure). In informing licensees regarding the uses which will be made of their SSNs, the commission might also consider whether any such SSN will be subject to public disclosure under the Open Records Act, Government Code chapter 552. See Open Records Decision No. 622 (1994).

In sum, we conclude that if the commission required licensees to disclose SSNs as part of its system of records in existence and operating before January 1, 1975, under a statute or regulation adopted prior to that date to verify the identity of an individual, or if a federal statute requires disclosure of SSNs to the commission, the commission is not prohibited from refusing to renew a license on the basis of a licensee's failure to disclose his or her SSN. Even if the commission is authorized to require the disclosure of an individual's SSN, it must "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." 5 U.S.C. § 552a note.

SUMMARY

Under the federal Privacy Act of 1974, 5 U.S.C. § 552a note (Act of Dec. 31, 1974, P.L. 93-579, § 7, 88 Stat. 1909), the Texas Real Estate Commission may not refuse to renew a license because of the licensee's failure to disclose his or her social security number unless (i) the disclosure is required by a federal statute or (ii) the commission uses the information in a system of records in existence and operating before January 1, 1975, under a statute or regulation adopted prior to that date to verify the identity of an individual. Even if the commission is authorized to require the disclosure of an individual's SSN, it must "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." 5 U.S.C. § 552a note.

Very truly yours,