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January 11, 1988

Ross Laybourn, Jr.
Department of Justice
Charitable Activities Section
500 Pacific Building
Portland, OR 97204

Re: Opinion Request OP-6197

Dear Mr. Laybourn:

The Charitable Activities Section of the Department of Justice seeks to obtain the social security number of every individual who applies for a bingo game operator permit. You ask two questions regarding the application of federal law to such a request. We state those questions and our brief answers, followed by a discussion.

First, you ask whether the Charitable Activities Section may require disclosure of an applicant's social security number as a condition to the grant of a bingo game operator permit. We answer no. The federal Privacy Act of 1974 makes it unlawful to deny any right, benefit or privilege provided by law to any individual who refuses to disclose his or her social security number, subject to certain exceptions not applicable to the Charitable Activities Section.

Next, you ask whether the Charitable Activities Section may request disclosure of an applicant's social security number without further comment. Again, we answer no. Any federal, state or local government agency that requests a social security number must inform the individual to whom such a request is made whether or not disclosure is required, under what statute or other authority disclosure is solicited and what uses will be made of that individual's social security number.

Discussion

1. Required Disclosure

The Privacy Act of 1974 makes it unlawful to condition a right, benefit or privilege provided by law upon disclosure of an individual's social security number subject to certain specified exceptions, as follows:

> "(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."

Pub L No. 93-579, § 7(a), 88 Stat 1896, 1909 (appearing at 5 USCA § 552a note). In enacting this legislation, Congress sought to curtail the expanding use of social security numbers by federal and state agencies and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by a common numerical identifiers. Doyle v. Wilson, 529 F Supp 1343, 1348 (D Del 1982) (quoting legislative history).

A 1976 amendment to the Social Security Act further allows a state or local agency to require disclosure under certain circumstances.

> "(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 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 Secretary.
>
> " * * * * *
>
> "(iii) 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 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 USCA § 405(c)(2)(C)(i), (iii).[1]

No federal statute requires applicants for a bingo game operator permit to disclose their social security number to the Charitable Activities Section. Nor is the section involved in the administration of any tax, general public assistance, driver's license or motor vehicle registration law. No system of records authorized by statute or regulation adopted before January 1, 1975, requires such disclosure. Accordingly, the Charitable Activities Section may not require an applicant to disclose his or her social security number as a condition to the grant of a permit. However, as outlined below, the section may, under certain conditions, ask an applicant to disclose his or her social security number.

2. Conditions for a Lawful Request for Disclosure

The Privacy Act of 1974 requires an agency that requests a person's social security number to inform that person whether

disclosure is mandatory, the source of authority for the request and the uses to which the disclosed information may be put. Alcaraz v. Block, supra, 746 F2d at 609. Section 7(b) provides:

> "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."

This provision effectuates one of the Act's primary purposes: to permit a person to make an informed decision whether to disclose his or her social security account number. Alcaraz v. Block, supra, 746 F2d at 608; Greater Cleveland Wel. Rights Org. v. Bauer, supra, 462 F Supp at 1319 n 3. In AFSCME v. City of Albany, 81 Or App 231, 234, 725 P2d 381 (1986), the Oregon Court of Appeals stated:

> "The apparent purpose of this section is to define the circumstances in which a government may require individuals to disclose their numbers, to allow individuals to make informed choices about whether to disclose their numbers in other circumstances and to provide protection for individuals who decide not to make voluntary disclosure."

See also Yeager v. Hackensack Water Company, 615 F Supp 1087, 1091 (D NJ 1985) (Privacy Act designed to discourage improper uses of social security numbers and allow individuals opportunity to make an intelligent decision regarding disclosure). Moreover, there is little doubt that Congress intended advance notice and disclosure. Doe v. Sharp, supra, 491 F Supp at 349-350 (citing 1974 US Code Cong & Admin News 6196-99). See also Doyle v. Wilson, supra, 529 F Supp at 1350 (state must make affirmative efforts to disclose potential uses at or before time of request).

There remains some uncertainty concerning the permissible uses of social security numbers obtained from individuals by government agencies. The "grandfather" clause of section 7 and the 1976 amendment to the Social Security Act both authorize use of social security numbers solely for purposes of identification.[2]

Case law gives little guidance concerning other possible uses of social security numbers. We conclude, however, that just as a government agency must have statutory or regulatory authority to request a social security number, an agency may use a social security number obtained from a person pursuant to that authority for no other purposes than those authorized by statute or administrative rule.[3] Although section 7(b) does not expressly so provide, that conclusion follows from the policies that underlie the governing federal statutes: avoiding threats to individual privacy and confidentiality, and discouraging improper uses of social security numbers.

Here, to the extent that OAR 137-25-090(2)[4] may be read to authorize the Charitable Activities Section to request disclosure of social security numbers, that rule authorizes the section to use those numbers, once obtained, only for purposes of personal identification. It is possible that additional uses may be authorized through the section's promulgation of additional administrative rules. The adoption of any such rules, however, must precede a request for disclosure of social security numbers to be used for those additional purposes.[5]

In sum, a government agency such as the Charitable Activities Section lawfully may request disclosure of a person's social security number by stating plainly whether the disclosure is mandatory or voluntary, the statutory or other authority for the request, and how the agency will use the number.[6] The agency may not use the number for purposes other than those authorized by statute or administrative rule.

Very truly yours,

Larry Thomson
Chief Counsel
Economic Affairs Division

LDT:RWW:RDW:mlm

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[1] Under these statutes, courts have upheld mandatory disclosure based upon the administration of general public assistance. See, e.g., Doe v. Sharp, 491 F Supp 346 (D Mass 1980); Greater Cleveland Wel. Rights Org. v. Bauer, 462 F Supp 1313 (ND Ohio 1978). In Doyle v. Wilson, supra, the district court suggested that a state treasurer lawfully might require disclosure of social security numbers to secure a refund of a motor vehicle

fine incident to the administration of a state driver's license or motor vehicle registration law. 529 F Supp at 1349. A state agency engaged in the administration of federally regulated school lunch programs also lawfully may require disclosure of social security numbers. Alcaraz v. Block, 746 F2d 593 (9th Cir 1984).

In Brookens v. United States, 627 F2d 494 (DC Cir 1980), the court held that provisions of Executive Order 9397 of November 22, 1943, satisfied the "grandfather clause" exception set forth in Section 7(a)(2)(B) of the Privacy Act. However, mere administrative practice, unsupported by any discrete grant of authority, is insufficient to satisfy this exception. See Doyle v. Wilson, supra, 529 F Supp at 1349 (citing Wolman v. United States of Am. Selective Service Sys., 501 F Supp 310, 311 (DDC 1980), remanded, 675 F2d 1341 (DC Cir 1982).

[2] Section 7(a)(2)(B) of the Privacy Act authorizes a government agency to require disclosure "if such disclosure was required [by statute or regulation adopted before January 1, 1975] to verify the identity of an individual." (Emphasis added.)

42 USCA § 405(c)(2)(C)(i) authorizes required disclosure in certain instances "for the purpose of establishing the identification of individuals." (Emphasis added.)

[3] Section 7(b) requires an agency to advise an individual "by what statutory or other authority" a social security number is solicited. This differs from the pertinent language of section 7(a)(2)(B), which requires authority provided by "statute or regulation."

The courts have concluded that mere administrative practice will not satisfy the requirements of section 7(a)(2)(B). Doyle v. Wilson, 529 F Supp 1343, 1349 (D Del 1982). The case law, however, provides no guidance with regard to section 7(b). In at least one instance, "citations to an unrevealing passage from an agency handbook" were deemed insufficient. Doe v. Sharp, 491 F Supp 346, 350 (D Mass 1980).

[4] OAR 137-25-090(2) provides that "[a] license application shall include a personal information statement, including information regarding personal identity."

[5] This conclusion does not restrict any mandatory disclosure of social security numbers by a public body pursuant to Oregon's Public Records Law. See Letter of Advice dated November 30, 1987, to Honorable Bob Shiprack, State Representative (OP-6182) at 8-9). Nor does it affect the government's use of social security numbers obtained other than directly from an individual. See id. at 7.

In AFSCME v. City of Albany, supra, the court left open the question of private remedies for unauthorized use of social security numbers, stating, "We need not consider what remedies, if any, an individual would have against a government which used a voluntarily-disclosed number for purposes other than those of which it had informed the individual when the government requested it." 81 Op App at 234 n 4.

[6] The courts have deemed the following requests sufficient to satisfy the requirements of section 7(b).

> "Section 9 of the National School Lunch Act requires that in order for your child to be eligible for free or reduced price means, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price benefits. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting the state employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims, or legal actions if incorrect information is reported."

Alcaraz v. Block, supra, 746 F2d at 608-09.

> "Disclosure by you of your social security number (SSN) is mandatory to obtain the services, benefits or processes that you are seeking. Solicitation of the SSN by the United States Civil Service Commission is authorized under provisions of Executive Order 9397, dated November 22, 1943. The SSN is used as an identifier throughout your Federal career from the time of application through retirement. It will be used primarily to identify your records that you file with the Civil Service Commission or agencies. The SSN also will be used by the Civil Service Commission and other Federal agencies in connection with lawful requests for information about you from your former employers, educational institutions and financial or other organizations. The information gathered through the use of the number will be used only as necessary in personnel administration processes carried out in accordance with established regulations and published notices of systems of records. The SSN also will be used for the selection of persons to be included in statistical studies of personnel management matters. The use of the SSN is made necessary because of the large number of present and former Federal employees, and applicants who have identical names and birth dates, and whose identities can only be distinguished by the SSN."

Brookens v. United States, supra, 627 F2d at 496-97.

> "Your social security number will be used as a means of identification in the administration of the ADC or medicaid programs. It will be used to determine your initial or continuing eligibility when contacting other people or agencies in order to obtain or verify information necessary to determine your eligibility and to determine that all public assistance regulations have been met."

Greater Cleveland Wel. Rights Org. v. Bauer, supra, 462 F Supp at 1318.