

Local Government Law Bulletin

Local Government Requirements for and Use of Social Security Account Numbers

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Local governments frequently ask, and sometimes require, citizens to give to the government their Social Security account numbers. A basic property tax listing form asks for the taxpayer's Social Security account number. Social services departments use Social Security account numbers to help with parent locator operations and require applicants for food stamps and for aid to families with dependent children (AFDC) to include their Social Security account numbers on their applications for assistance. Many utility departments ask customers for their Social Security account numbers when establishing new utility accounts. And, of course, governments need the Social Security account numbers of their employees and of individuals with whom the governments contract in order to comply with federal tax and F.I.C.A. requirements. When local governments request or demand Social Security account numbers, two questions sometimes arise: First, can a citizen refuse to provide his or her Social Security account number to the government, and if so, when? Second, once a government has acquired a person's Social Security account number, is that number a public record, accessible to anyone who cares to ask? This *Local Government Law Bulletin* addresses those two questions.

The questions arise because many citizens and commentators believe that the widespread use of Social Security account numbers (SSNs), by both public and private organizations, threatens individual privacy. SSNs were not originally intended to be used for identification purposes, but they in fact have become the principal identifiers for all Americans.¹ This fact, combined with the nearly universal coverage

of Social Security and the spread of computer networking technology, makes it possible to obtain significant amounts of information about a person through that person's Social Security account number.² As long ago as 1974, when it enacted the Privacy Act provisions discussed in this *Bulletin*, Congress described the extensive use of SSNs as universal identifiers as "one of the most serious manifestations of privacy concerns in the Nation."³ Much more recently, the Fourth Circuit Court of Appeals amplified this concern:

[A]rmed with one's SSN, 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 SSN to an unscrupulous individual is alarming and potentially financially ruinous.⁴

When May a Local Government Request or Require Social Security Numbers?

Section 7(a) of the Privacy Act: The Basic Provision of Law

The fundamental federal statute affecting the first question considered in this *Bulletin* is Section 7 of the Privacy Act of 1974, which can be found in a footnote attached to Section

2. See *Whalen v. Roe*, 429 U.S. 589, 605 (1977) (discussing the threat to privacy posed by the "vast amounts of personal information" in computer data banks).

3. S. REP. NO. 1183, 93d Cong., 2d Sess. 29 (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6943.

4. *Greidinger v. Davis*, 988 F.2d 1344, 1353 (4th Cir. 1993) (citing Elizabeth Neuffer, *Victims Urge Crackdown on Identity Theft*, BOSTON GLOBE, July 9, 1991, at Metro 13, 20). Other cases have similarly highlighted the amount of information that can be obtained through access to SSNs. See, e.g., *Doe v. Registrar of Motor Vehicles*, 528 N.E.2d 880, 886-87 (Mass. App. Ct. 1988).

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1. Sally E. Renskers, *Trial By Certainty: Implications of Genetic "DNA Fingerprints D,"* 39 EMORY L.J. 309, 339 (1990).

552a of Title 5 of the United States Code. (It is not clear why this section is included in a footnote rather than the text of the Code.) The section reads:

- Sec. 7.(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 the 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.⁵

Fundamentally, and subject to the exceptions discussed below, Section 7(a)(1) prohibits federal, state, and local governments from conditioning the receipt of any government right, benefit, or privilege on a person's disclosure of his or her SSN.

Section 7 Exceptions

Section 7 itself makes two exceptions to this general prohibition. First, Section 7(a)(2)(A) exempts from the prohibition disclosures that are required by federal statute. There appear to be few such direct requirements, however. Government employees, of course, are required to disclose their SSNs to their employers,⁶ and others dealing with the government in transactions with tax implications may be required to do so in order for the government to submit information returns to the Internal Revenue Service. Beyond these tax- and Social Security-related purposes, however, a search of the indices to the United States Code Annotated and the Code of Federal Regulations discloses only a few other direct requirements that might apply to local governments. First, Section 1320b-7(a)(1) of Title 42 of the United States Code requires that state plans for certain public assistance programs require applicants for assistance to furnish their SSNs. The covered public assistance programs are aid to families with dependent

children (AFDC), Medicaid, unemployment compensation, food stamps, old age assistance, aid to the blind, and aid to the permanently and totally disabled. Second, Section 2025(e) of Title 7 of the United States Code requires agencies administering the food stamp program to obtain the Social Security account number of each member of a household receiving food stamps. Third, Section 405(c)(2)(C)(ii) of Title 42 requires each state or local agency administering a law requiring birth registration to obtain the SSN of each parent of a newborn child.⁷ These SSNs, however, are not to appear on the birth certificate; rather, they are to be used to assist enforcement of any child-support order. Fourth, Section 3543 of Title 42 authorizes the secretary of housing and urban development to require applicants for or participants in various federal housing assistance programs to disclose the Social Security number of each member of an assisted or participating household. In reliance on this authorization, the secretary has promulgated a number of regulations requiring disclosure of SSNs, and local governments may be the processing agency for some of these programs.⁸

The second exception to Section 7(a)(1)'s general prohibition is Section 7(a)(2)(B), which excepts disclosure requirements that were in effect before January 1, 1975, and that were imposed pursuant to a "statute or regulation" adopted before that date. It must be stressed that to qualify for this exception it is not enough that a local government demonstrate that it was requiring SSNs before January 1, 1975. The government must in addition show that the requirement was pursuant to some adopted statute or regulation.⁹ In *Brookens v. United States*,¹⁰ the court held that an executive order issued by President Roosevelt in 1943¹¹ was within the meaning of a "regulation" in Section 7(a)(2)(B), thus authorizing a practice maintained before 1975. This reading of *regulation* suggests that a local ordinance or duly promulgated regulation of a local agency will probably be adequate authorization for SSN disclosure requirements that were established before 1975. (The statutory exception also requires that the purpose of the pre-1975 requirement must have been to "verify the identity of an individual." No case has discussed this aspect of the

7. N.C. GEN. STAT. § 130A-101(g) implements this federal requirement. Hereinafter the General Statutes will be cited as G.S.

8. See, e.g., 24 C.F.R. § 750.10 (1993) for housing assistance programs; and 24 C.F.R. § 510.106 (1993) for rehabilitation loans.

9. *Doyle v. Wilson*, 529 F. Supp. 1343, 1349 (D. Del. 1982) [citing *Wolman v. United States Selective Service System*, 542 F. Supp. 310, 311 (D.D.C. 1980)].

10. 627 F.2d 494 (D.C. Cir. 1980).

11. The order provided that "any Federal department . . . shall whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize exclusively the Social Security Act account numbers. . . ." *Brookens*, 627 F.2d at 497.

5. Privacy Act of 1974, Pub. L. No. 93-579 § 7, 88 Stat. 1896, 1909.

6. 26 C.F.R. § 31.6011(b)-2(b) (1993).

exception, but there may be some doubt about a practice, such as requiring water customers to give their Social Security numbers, that is intended more to establish a billing account number than to verify individual identity.)

Other Federally Authorized Exceptions

Two other federal statutory provisions create additional exceptions to the basic prohibition of Section 7(a) of the Privacy Act, while a third federal statute results in local governments obtaining individual SSNs from the federal government.¹² The most important provision is Section 405(c)(2)(C)(i) of Title 42: this paragraph specifically authorizes local governments to require disclosure of SSNs, and allows use of them for identification purposes in the administration of any (1) tax; (2) general public assistance; (3) driver's license; or (4) motor vehicle registration law within their jurisdiction.¹³ Relying on this statute, courts have upheld local government requirements for disclosure of SSNs when those requirements come within any of the four administrative areas.¹⁴ A second provision in Section 405 is found at 405(c)(2)(D) of Title 42, which specifically permits governments operating blood donation programs to require prospective donors to disclose their SSNs. Finally, Section 653 of Title 42 authorizes state agencies (including local government agencies) to obtain SSNs from the federal government in order to administer parent locator services. For North Carolina local governments, then, these provisions permit them to *require* SSNs from persons as a part of the administration of any local tax, the administration of general public assistance (which is not defined in the federal statute), and the administration of a blood donation program;

12. Because these provisions grant authorizations to require SSNs, rather than impose requirements to do so, they do not fall within the terms of Section 7(a)(1) of the Privacy Act.

13. The relevant portion of the paragraph states:

(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 Secretary for the purposes of establishing the identification of individuals affected by such law, and may require any individual who is or who 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.

42 U.S.C. § 405(c)(2)(C)(i) (1988).

14. *See, e.g.,* Kangas v. Wadena, No. C4-87-374, 1988 WL 31724, 2 (Minn. Tax March 17, 1988) (holding that a local government could require the disclosure of Social Security numbers on applications for homestead classification).

they also result in local governments obtaining SSNs of some persons for use in parent locator services.

In any context other than those set out above, a local government may only *request* (and not require) persons to divulge their SSNs.

Section 7(b) of the Privacy Act: Notice Requirements

Information for Individuals Providing SSNs

Section 7(b) of the Privacy Act directs any state or local government that demands or requests an individual to disclose his or her SSN to the government to first provide certain information to that individual. (Please note that this directive applies even when a government is entitled, under federal law, to require that person to disclose to the government his or her SSN.)¹⁵ The required information is as follows: (1) whether SSN disclosure to the government is mandatory or voluntary; (2) by what statutory or other authority the SSN is solicited; and (3) what uses will be made of the number.¹⁶

15. Although certain authorities initially implied that Section 405(c)(2)(C)(i) effectively repealed Section 7(b), so that disclosure was unnecessary when SSNs were required in the administration of a tax or general public assistance program, the continuing application of Section 7(b) even in those situations is certain. Numerous cases have recognized Section 7(b) claims after the passage of the amendment to Section 405(c)(2). *See, e.g.,* Greater Cleveland Welfare Rights Organization v. Bauer, 462 F. Supp. 1313, 1321 (N.D. Ohio 1978) (recognizing the plaintiffs' right to prospective remedy based on Section 7(b) violation); *see also* State v. Hughes, 442 N.E.2d 786, 790 (Ohio Ct. App. 1981) (reasoning that the two statutes do not conflict in that Section 7(b) requires only notice of the intended use of SSNs, while the amendment to Section 405(c)(2) addresses only the ways in which a government may use SSNs and require their disclosure to the government).

16. 5 U.S.C. § 552a n. (b) (1988). *See supra* text accompanying note 5. For cases holding governmental defendants not to have satisfied Section 7(b), *see* Ingerman v. New Jersey Dept. of Health, CIV No. 88-1541, 1988 WL 52247 (D.N.J. May 23, 1988); Yeager v. Hackensack Water Co., 615 F. Supp. 1087, 1091-92 (D.N.J., 1985); Doe v. Sharp, 491 F. Supp. 346, 350 (D. Mass. 1980); State v. Hughes, 442 N.E.2d 786, 790 (Ohio Ct. App. 1981). *See also* Greidinger v. Davis, 988 F.2d 1344, 1347 (4th Circuit 1993) (lower court originally finding notice requirement not satisfied but defendant added notice that court subsequently found to be acceptable); Doe v. Registrar of Motor Vehicles, 528 N.E.2d 880, 888 (Mass App. Ct. 1988) (registrar made to show compliance on remand since adequate notice was not proven in the current proceeding). For a case finding the government to have satisfied Section 7(b), *see* Billman v. Commissioner of Internal Revenue, 847 F.2d 887 (D.D.C. 1988) [rejecting a taxpayer's contest of his tax liability on the ground that the notice on the IRS tax forms failed to comply with Section 7(b)].

One court allowed a local government to avoid making proper Section 7(b) notice because the government was not currently using the SSNs and had no plans to use them in its AFDC programs in the near future. Chambers v. Klein, 419 F. Supp. 569, 579-80 (D.N.J. 1976).

Several federal courts have elaborated this notice requirement. In *Greater Cleveland Welfare Rights Organization v. Bauer*,¹⁷ the district court found the government's disclosure language inadequate.¹⁸ The court held that Section 7(b) requires a "meaningful disclosure" and therefore directed the government to disclose not only the uses to which the SSNs would be put, but also the potential consequences of those uses.¹⁹ Courts have also held that disclosure must come *before* the SSN is requested.²⁰

The Effect of Inadequate Notice

What happens when a local government has required or requested SSNs from citizens without giving the notice required by Section 7(b)? The usual remedy has been to require future compliance by the affected government but not to bar the government from using any SSNs obtained in violation of the statutory notice requirement. If the government has the numbers, it may use them. In refusing to bar government use of the numbers, the court in *Bauer*, for instance, stated that a "huge waste of effort and funds" would result from forbidding the use of information already obtained from SSNs.²¹

17. 462 F. Supp. 1313 (N.D. Ohio 1978).

18. Specifically, the notice in question read:

Your Social Security number will be used as a means of identification in the administration of the AFDC 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.

Bauer, 462 F. Supp. at 1321.

19. *Id.* The court specifically held that to comply with Section 7(b) the notification in this case must inform recipients that: (1) their SSNs will be used to verify employment information supplied on the application with the Social Security Administration, and (2) the recipient may be subject to prosecution for fraud if the records of the Social Security Administration reveal that the recipient supplied inaccurate employment information on the application. *Id.*

20. *See, e.g., Doe v. Sharp*, 491 F. Supp. 346, 349 (D. Mass. 1980) (determining that the legislative history of the Privacy Act emphasized the need for advance notice, stating that "Notice to the public, and public choice to consent to, or refuse to, disclose a Social Security number is crucial to the principal echoed throughout the [legislative history] report"). *But see Chambers*, 419 F. Supp. at 580 (condoning failure to inform when no use was made of the Social Security numbers); *McElrath v. Califano*, 615 F.2d 434, 438 (7th Cir. 1980) (not addressing the litigant's Section 7(b) claim after the lower court viewed the failure to inform as a mere technical violation that would be rectified by the notice the defendant was to disseminate).

21. *Bauer*, 462 F. Supp. at 1320; *see also State v. Hughes*, 442 N.E.2d 786, 790 (Ohio Ct. App. 1981) (reasoning that use of the information obtained from SSNs did not offend "a conception of justice and sense of fair play" as required by due process); *Cham-*

The only case in which a court took a somewhat different tack was *Yeager v. Hackensack Water Company*, and even there it simply enjoined the dissemination of the numbers and not their use by the defendant water company.²²

Does the Constitution Limit Requiring Disclosure of Social Security Account Numbers?

Litigants sometimes assert that governmental requirements that they disclose their SSNs violate their constitutional rights, either of privacy or of free exercise of religion. These constitutional claims, however, have not prevailed.

First, litigants have argued that the constitutional right to privacy bars governmental requirements that citizens disclose their SSNs. Courts have uniformly and summarily rejected such claims.²³

Second, some litigants have sought the protection of the free exercise clause of the First Amendment,²⁴ but again without real success. *Stevens v. Berger*²⁵ represents the greatest success by such a plaintiff: there the court held that the plaintiffs need not *obtain* SSNs for their children as a condition of receiving AFDC benefits because doing so would seriously jeopardize their sincerely held religious beliefs.²⁶ *Stevens* did not address the disclosure to the government of SSNs already obtained by individuals, however, and both cases to adjudicate fully the free exercise claims of persons who had already obtained numbers have rejected the claims and have upheld the

bers, 419 F. Supp. at 580 (determining that denying use of the numbers would have a far-reaching effect that was not warranted by a "technical" violation of the Privacy Act).

22. Specifically, the court held that the individuals from whom the defendant had received SSNs must be informed of the three 7(b) notices and that the defendant, until satisfaction of the 7(b) disclosure, was obliged to safeguard the information gathered and was enjoined from disseminating the SSNs. The court also held that the state was enjoined from enforcing any civil or criminal penalties against anyone who declined to provide an SSN without the benefit of the proper notice. *Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087, 1092 (D.N.J., 1985).

23. *E.g., Doyle v. Wilson*, 529 F. Supp. 1343, 1348 (D. Del. 1982); *Doe v. Sharp*, 491 F. Supp. at 350; *Bauer*, 462 F. Supp. at 1319; *Chambers*, 419 F. Supp. at 581; *Penner v. King*, 695 S.W.2d 887, 891 (Mo. 1985).

24. Most litigants making such free exercise claims have based their claims on the New Testament Book of Revelation, which states that those who receive the mark of the second beast shall be damned. *See Revelation 14:9-11*. This mark is characterized as a number required for buying and selling, *see id.* at 13-17, and litigants have asserted that SSNs have come to share many of the attributes of the mark of the beast. *See Leahy v. District of Columbia*, 833 F.2d 1046, 1047-48 (D.C. Cir. 1987). Native American litigants have also asserted that obtaining and using SSNs "robs their spirit" of the purity important to Native American religion. *See Bowen v. Roy*, 476 U.S. 693, 697 (1986).

25. 428 F. Supp. 896 (E.D.N.Y. 1977).

26. *Id.* at 908.

governmental disclosure requirements.²⁷ Thus claims based on the free exercise clause have been successful as a bar to requirements that persons *obtain* SSNs but not to requirements that they *disclose* to government their SSNs once obtained.²⁸

Once a Local Government Possesses Individual Social Security Numbers, Are Those Numbers Open to Public Inspection?

Once a local government has obtained individual SSNs, what, if any, limitations are there on the local government's use and release to the public of those SSNs? Unlike the restrictions discussed so far, this next question is affected by both federal and state law.

Federal Constitutional Restrictions

Virginia's constitution requires that persons registering to vote disclose to the registrar their SSNs; Virginia has permitted the completed applications, including the SSNs, to be inspected by any other voter. In the recent case of *Greidinger v. Davis*, the Fourth Circuit Court of Appeals held that the practice of making the completed applications available for public inspection unconstitutionally burdened the plaintiff's fundamental right to vote under the federal Constitution.²⁹

Apart from its specific voting context, *Greidinger* is probably not broadly relevant to local governments. In *Greidinger* the government obtained the numbers as part of an activity involving the exercise of a fundamental right—

27. *Penner*, 695 S.W.2d at 890–91 (denying a claim regarding the mandatory disclosure of SSNs on driver's license application); *Mullaney v. Woods*, 158 Cal. Rptr. 902, 911–912 (Cal. Dist. Ct. App. 1979) (concluding that the state's interest in maintaining the fiscal integrity of the welfare system was sufficient to justify the free exercise intrusion and that requiring the SSN of AFDC recipients was the least restrictive means available). In addition, the United States Supreme Court has held that a citizen cannot prevent a government from using SSNs because of the citizen's religious beliefs; government practice cannot be dictated by the religious beliefs of individual citizens. *Bowen v. Roy*, 476 U.S. 693 (1986). The Court could not agree, however, on whether the free exercise clause restricted the government's ability to require SSNs as a condition of public assistance.

28. The recent case of *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), which involved Virginia's constitutional requirement that persons registering to vote disclose their SSNs to the registrar, attacked only the public dissemination of SSNs once in the government's possession. It did not attack the requirement that prospective voters disclose their numbers. This case is discussed below, in the text accompanying notes 29 and 30.

29. The court remanded the case to the district court to give Virginia the responsibility to solve the constitutional problems by either deleting the authority to make the applications available to the public or by eliminating the inclusion of the numbers in the voter registration records open to public inspection. *Greidinger*, 988 F.2d 1344 at 1354–55.

voting. As a practical matter, however, the programs or activities for which a local government obtains individual SSNs rarely involve fundamental rights. The most common instances in which governments have SSNs are in the administration of tax or social services programs, in the administration of utility systems, and as employer. None of these involve the fundamental constitutional rights of the persons submitting SSNs to the government, and therefore, in these programs and activities, local governments need not be concerned about any *constitutional* bar to permitting public access to SSNs in the government's possession.³⁰

Section 405(c)(2)(C)(vii) of Title 42

Section 405(c)(2)(C)(viii) of Title 42 of the U.S. Code, enacted in 1990, requires that some SSNs held by governments be kept confidential, depending on the date of enactment of the law under which the numbers are obtained.³¹ The provision reads, in its entirety, as follows:

Social Security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such Social Security account number or related record.

Authorized person in the latter section is defined to include officers and employees of state or local government. The subsection goes on to make violation of this provision a federal felony, punishable by a fine of up to \$5000, imprisonment for up to five years, or both. Given the seriousness placed upon violation of this statute, it is unfortunate that there are some ambiguities inherent in it.³²

First, it is not clear whether the reference to "provision of law" means a federal statute or regulation or whether it includes state laws, local ordinances, and so on. If there is a federal statute that specifically permits obtaining SSNs, such as any of those discussed in the first part of this *Bulletin*, the enactment date of that statute probably is the date intended by the statute, rather than the date of enactment of any state or local statute, ordinance, or rule that implements the federal statute. But if there is no pertinent federal statute (other than Section 7 of the Privacy Act, which places limits on obtaining

30. See *McElrath v. Califano*, 615 F.2d 434, 441 (holding that conditioning the receipt of welfare benefits on the disclosure of Social Security numbers was not unconstitutional). The court in *McElrath* added that the disclosure of Social Security numbers had consistently been held not to violate any right to privacy before the passage of the Privacy Act in 1974. *Id.* [citing *Cantor v. Supreme Court of Pennsylvania*, 353 F. Supp. 1307, 1321–22 (E.D. Pa. 1973)]; *Conant v. Hill*, 326 F. Supp. 25, 26 (E.D. Va. 1971).

31. 42 U.S.C. § 405(c)(2)(C)(vii) (1990).

32. The provision was added to the enacting statute in a conference committee, and there is no published legislative history as to its meaning.

SSNs rather than authorizing obtaining them), given the criminal nature of the prohibition, it is safest to interpret the language broadly and extend it to state and local, as well as federal, laws. Only if the authorizing state law or regulation or local ordinance or rule was enacted or adopted before October 1, 1990, should a local government permit public access to SSNs gathered pursuant to that measure.

Second, there are no doubt numerous local programs that demand or request SSNs from people that are not based on any specific measure that could be interpreted as a law. For example, a city may have begun requesting SSNs from water and sewer customers simply through the process of designing a new computerized accounting and billing system. If such a practice predates October 1, 1990, it is not clear whether the SSNs obtained under the program are exempt from the confidentiality requirement. If there is no authorizing statute, ordinance, regulation, or rule, the safe course again is to assume that the numbers obtained are confidential. Only if there is some sort of clear federal, state, or local action that predates October 1, 1990 are the numbers clearly not confidential under this federal statute.

Other Federal Statutory Provisions

The federal statutes that specifically permit or require local governments to require persons to disclose to the government their SSNs sometimes go on, directly or indirectly, to place restrictions on the use of the numbers by the government that obtains them. These provisions may affect whether the numbers may be made available to the public.

Some provisions specifically restrict use of the numbers, by the government agency obtaining them, to the program for which they have been obtained. Most importantly, Section 405(c)(2)(C)(v) of Title 42 provides that if a state or local government requires disclosure to it of SSNs in order to administer a welfare, driver's license, or motor vehicle registration program, pursuant to Section 405(c)(2)(C)(i), it may require disclosure of the number solely for the purpose of administering that program.³³ (It is noteworthy that this provision does not extend to SSNs disclosed in the administration of a state or local tax.) The statutory language suggests that the number ought not to be released for any other purpose, either to other government agencies or to the general public, but the matter is ambiguous.

Another approach is found in the regulations by which the secretary of housing and urban development requires SSNs in the administration of various housing programs. These simply state that the dissemination of the numbers is to

33. A comparable provision is found in 42 U.S.C. § 405(c)(2)(C)(ii) (1993), which provides that numbers collected in the birth registration process may not be used for any purpose other than enforcement of child-support orders, unless the collection of the number is grandfathered under section 7(a) of the Privacy Act.

take place in compliance with the Privacy Act and with other state and federal laws.³⁴ The Privacy Act says nothing about dissemination, the regulations in question antedate October 1, 1990, and therefore access to these numbers is regulated only by state law.³⁵

State Law

The general public records law in North Carolina is Chapter 132 of the General Statutes. Section 132-1 begins with an expansive definition of public records as "all documents . . . , regardless of physical form or characteristics, made or received pursuant to a law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions," while Section 132-6 permits broad public access to public records so defined. In *News and Observer Publishing Co., Inc. v. Poole*,³⁶ the North Carolina Supreme Court held that only the General Assembly, and not the courts, may create exceptions to this right of access. Thus any record held by a government is presumptively open to public access unless some state (or federal) statute makes the record confidential or permits the record custodian to deny access. Although Chapter 132 itself explicitly excepts some records from the right of access,³⁷ none of these direct exceptions include SSNs.

Three state statutes (or sets of statutes) that are not part of Chapter 132 either do or may affect access to some Social Security account numbers in the possession of local governments. First, and clearest in its applicability, is G.S. 108A-80. This section makes it unlawful for any person either to obtain or to provide any information concerning persons applying for or receiving public assistance or social services that might be derived from social services departmental records. This broad statute appears to make confidential the Social Security account numbers of persons receiving social services, when those numbers have been obtained by the government as part of the administration of the social services program.

Second is the group of statutes that regulate access to the personnel files of various groups of public employees: state employees;³⁸ county employees;³⁹ city employees;⁴⁰ public

34. 24 C.F.R. § 510.106(h) and 24 C.F.R. § 750.20 (1993).

35. See *American Federation of State, County, and Municipal Employers, Council 75 v. City of Albany*, 725 P.2d 381, 382-384 (Or. Ct. App. 1986) (holding that the Privacy Act and the Social Security Act do not control the governmental dissemination of SSNs of city employees).

36. 330 N.C. 465 (1992).

37. G.S. 132-1.1 (confidential communications by counsel to a public board or agency); 132-1.2 (certain trade secrets); 132-1.4 (criminal investigation records); 132-6 (certain economic development records).

38. G.S. 126-22 through -30 (1991).

39. G.S. 153A-98 (1991).

40. G.S. 160A-168 (1987).

school employees;⁴¹ district health department employees;⁴² area mental health employees;⁴³ and water authority employees.⁴⁴ Each of the statutes follows a common form: a limited amount of information in an employee's personnel file is open to public access, and the remaining information is generally confidential. None of the statutes include SSNs in the list of information automatically open to public access, and thus those numbers are confidential.

This is the proper treatment of SSNs that are clearly part of personnel records. But SSNs are also included in financial records, such as payroll records. In that context, do they retain the status of personnel records? Although the matter cannot be stated with certainty, it seems preferable to treat employee SSNs, wherever found in a local government's records, as part of the personnel file. First, the numbers are initially generated as part of the personnel process. Second, the numbers are creations of federal law, and federal law recognizes a strong privacy interest in the numbers. The Privacy Act, as discussed above, makes it difficult for governments to require that citizens divulge SSNs to government, while the 1990 amendment to Section 405 of Title 42 makes many SSNs held by local governments confidential as a matter of federal law. In addition, the federal Freedom of Information Act (FOIA),⁴⁵ as interpreted by the federal courts, gives considerable privacy protection to SSNs in the hands of federal agencies. The federal courts have consistently recognized that release of SSNs would constitute a "clearly unwarranted invasion of personal privacy" under the FOIA.⁴⁶ Given this federal concern, an expansive protection of employee SSNs is warranted.

41. G.S. 115C-319 through -321 (1991).

42. G.S. 130A-42 (1990).

43. G.S. 122C-158 (1989).

44. G.S. 162A-6.1 (1993) (effective October 1, 1993).

45. 5 U.S.C. § 552 (1988).

46. *See, e.g.*, *Local 3, I.B.E.W., AFL-CIO v. National Labor Relations Board*, 845 F.2d 1177, 1181 (2nd Cir. 1988); *I.B.E.W. Local Union No. 5 v. U.S. Dep't. of Housing and Urban Development*, 852 F.2d 87, 89 (3rd Cir. 1988); *Gannett Satellite Information Network v. U.S. Dep't. of Education*, Civ. A. No. 90-1392, 1990 WL 251480, 7 (D.D.C. Dec. 21, 1990); *Hopkins v. U.S. Dep't. of Housing and Urban Development*, 929 F.2d 81, 86-89 (2nd Cir. 1991) (stating that disclosure affecting privacy interest is permissible only if the information reveals something directly about government); *Oliva v. United States*, 754 F. Supp. 105, 106-07 (E.D.N.Y. 1991) (noting that the Supreme Court has never ordered an agency to honor a request about a private citizen); *see also* *Dixon v. Internal Revenue Service*, CIV. A. No. 78-254-N, 1979 WL 1363 (N.D. Ala. May 22, 1979). *But see* *Painting Industry of Hawaii Market Recovery Fund v. United States Department of Air Force*, 756 F. Supp. 452, 456 (D. Haw. 1990) (rejecting claims that SSNs were protected from disclosure under either Exemption 6 or Exemption 7(C) of the FOIA).

Although the prescribed exceptions in the FOIA only prevent litigants from forcing government to disclose certain types of information, courts have often applied the exceptions to create affirma-

The third North Carolina statute is G.S. 105-259, which applies to (among others) local tax officials. This section makes confidential a variety of information gathered through tax returns, including Social Security account numbers. The statute is somewhat confusing in its coverage, however, and may apply only to tax returns, especially income tax returns, submitted to the Department of Revenue. If so, and unfortunately it is not possible to be any more definitive, the section would not apply to local property tax listing records that happen to include SSNs. The two statutes that deal specifically with local tax records, G.S. 153A-148.1 and G.S. 160A-208.1, make confidential only information that would reveal a taxpayer's income or receipts; there is no provision in the two statutes concerning Social Security account numbers.

If a local government receives individual SSNs, as regulator, taxing entity, or service provider, in any context other than those covered by the specific federal or state provisions discussed above, those SSNs appear to be open to public inspection under the public records law.⁴⁷

Conclusion

In summary, local governments violate federal law if they deny individuals any right, benefit, or privilege because of those individuals' refusal to disclose their SSNs unless (1) a federal statute specifically requires or authorizes the practice of requiring SSNs or (2) official statutory or regulatory authority authorizes the practice and the practice and the relevant authorization were both in effect before 1975. The only federal requirements for SSNs involve administration of food stamps, AFDC, and other public assistance programs; administration of birth registrations; and administration of federally assisted housing programs. Separate federal statutes, however, authorize local governments to require disclosure of SSNs in the administration of any tax or general public assistance program, and in blood donation programs. Apart from these specific contexts, a local government may only require—and not require—persons to disclose their SSNs.

Whenever it asks for or demands a person's SSN, a local

tive rights in individuals to prevent the government from disclosing information. This application is evident in "reverse" FOIA actions in which private parties seek to enjoin the government under the FOIA from publicly releasing information. *See* *Westinghouse Electric Corporation—Research and Development Center v. Brown*, 443 F. Supp. 1225, 1227-28 (E.D. Va. 1977) (federal officials in reverse FOIA action agreed not to disclose Westinghouse employee SSNs); *Metropolitan Life Insurance Co. v. Usery*, 426 F. Supp. 150, 167 (D.D.C. 1976) (government agreed to delete SSNs in documents sought to be protected in reverse FOIA action).

47. A Louisiana appellate court recently reached that conclusion under that state's public records law, noting that no statute specifically excepted these numbers from public access. *Hays v. Lundy*, 616 So.2d 265 (La. Ct. App. 1993).

government must inform the person: (1) whether disclosure is mandatory or voluntary; (2) by what statutory or other authority the SSNs are solicited; and (3) what uses will be made of the numbers. This information should be given before the number is requested.

Once a government has obtained a person's SSN, federal law may place restrictions on access to the number by anyone other than the administrators of the program for which the number was obtained. To determine whether such federal restrictions exist, it is necessary to determine if there is specific federal authority for obtaining the number, whether that

federal authority directly restricts access to the number, and when the federal, state, or local law, if any, authorizing collection of the number was enacted. If federal law is inapplicable, then the question becomes one of state law. Clearly, North Carolina law restricts access to SSNs collected by local departments of social services and perhaps to those collected by tax departments, and the SSNs of government employees remain confidential and cannot be publicly disseminated by the government employer. For any other programs, however, for which a local government has obtained SSNs, state law imposes no restrictions on public access to those numbers.