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November 1, 1982

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ARIZONA ATTORNEY GENERAL

Mrs. Carol Roush, Assistant Director
Arizona Department of Economic Security
Post Office Box 6123
Phoenix, Arizona 85005

Re: I82-119 (R82-135)

Dear Mrs. Roush:

We are writing in response to two questions that you asked about the Job Services program. The first is whether Job Services must inform each applicant individually of his rights and privileges relating to divulgence of his social security number, or whether the disclosure of such information through the use of openly displayed posters is sufficient.

Section 7.b of P.L. 93-579, 5 U.S.C. § 552a note, provides:

(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.¹ (Emphasis added.)

1. Cf. 5 U.S.C. § 552a.e.3 (the federal APA requirement that an agency requesting information must inform each individual whom it asks to supply information on the form which it uses to collect the information or on a separate form that can be retained by the individual the authority for requesting the information, whether disclosure is mandatory or voluntary,

(Footnote 1 is continued on the next page.)

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The statute does not specify whether individual notification is required. Several federal courts have interpreted the notification provision to require "meaningful disclosure." They have stated that the individual must be informed whether the disclosure of the social security number is mandatory or voluntary, the statutory or other authority by which the number is solicited and the uses to be made of it. For example, the

footnote 1 continued:

the principal purpose for which the information will be used and the effects on an individual who does not provide the requested information). Section 7 provides an exception allowing an agency to require the mandatory disclosure of a social security number if that agency maintained "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." Job Services had no such regulation or applicable statute, though A.C.R.R. R6-2-110 governing unemployment insurance matters allows the Department of Economic Security to obtain from an applicant "that information which is necessary to determine his qualifications for employment and facilitate his placement on the job, and such additional information as the Secretary [of Labor] may require." This rule was adopted substantially prior to 1975, on September 23, 1941. There is no requirement by the Secretary of Labor that social security numbers be disclosed for job service applicants. One other exception is that agencies administering "any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction [may] 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 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. § 405.2(c) i. The statewide director for Job Services has assured the Attorney General's office that Job Services is not considered to be a general public assistance program. See, 29 U.S.C. §§ 49b et seq. and 20 C.F.R. Parts 602-604. It would not appear to be such under the definition used by the Arizona Supreme Court in Maricopa County v. State of Arizona, 51 Ariz. 372, 77 P.2d 212, 214 (1938). See also Atty.Gen.Op. No. 77-85.

court in Greater Cleveland Welfare Rights Organization v. Bauer, 462 F.Supp. 1313, 1321 (D.C. Ohio 1978), stated:

As stated previously, said documents contain the following description of the uses to be made of social security numbers:

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.

The Court believes that Section 7.b [of the Privacy Act of 1974] requires a meaningful disclosure. It does not consider the disclosure now in use meaningful. To comply with Section 7.b, the Court finds, it is necessary to inform recipients that their social security numbers will be used to verify employment information supplied on the dec form with the Social Security Administration. Said disclosure must also include a statement that if the records of the Social Security Administration reveal that the employment information supplied on the dec form is not accurate, the AFDC recipient may be subject to prosecution for fraud.

See also Doe v. Sharp, 491 F.Supp. 346, 350 (D.C. Mass. 1980).²⁷

2. In Ariz. Atty. Gen. Op. 78-185, we said:

A request for voluntary disclosure, however, would not violate the Act if certain conditions are met. You must inform each claimant that disclosure of the number is voluntary, state authority for the request or disclosure, and state the particular uses that will be made of the number. You should also emphasize to your personnel that no action can be taken against a claimant for refusal to supply his social security number. (Emphasis in original.)

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We think that the cited authorities suggest that each person must be informed as required in section 7.b in a manner most likely within reason to apprise the person fully of his rights respecting the disclosure of his social security number. We cannot say that posters publicly displaying the required information are the means most reasonably likely to inform a person fully of his rights. Therefore, we advise you that the information must be either included in the form on which the social security number is requested, or conveyed individually to each person in connection with the request, such as by means of a separate form that a person may read and retain.

You next asked what obligation Job Services has to publicly display or otherwise make available to its applicants a listing of all current job openings. The federal regulations governing the operation of Job Services specifically describes the information that must be made available to Job Service applicants:

(a) State agencies shall compile job information for the purpose of providing it to the public.

(b) Each state agency shall make available job information with respect to local office areas to all individuals and, if desired by an individual, job information with respect to other areas within the State. Upon request from an individual, State agencies shall assist an individual to obtain job information about jobs in other States in which he/she may have interest in employment.

(c) Job information available to the public about specific job openings listed with a State agency shall include:

- (1) Job title and hiring specifications;
- (2) Salary or wage range;
- (3) Starting date of employment;
- (4) Anticipated duration of employment;

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(5) Any special terms and conditions of employment identified by the employer;

(6) Where applicable, notice of affirmative action specification and target group(s) encouraged to apply;

(7) Total base hours to be worked each week, and any overtime indicated;

(8) Location of worksite, when appropriate.

20 C.F.R. § 653.2.

The federal regulations also require:

(a) Every attempt shall be made to refer applicants to jobs which utilize the applicant's highest skills, knowledge, and abilities in keeping with the information provided by the applicant and the employer.

20 C.F.R. § 653.6.

There are no confidentiality requirements that would prevent this information being given to applicants. See, e.g., 20 C.F.R. §§ 602.18 and 604.16 and A.R.S. § 41-1959.

Sincerely,



BOB CORBIN
Attorney General

BC:DR:lm