STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94056

STATE OF NEBRASKA
OFFICIAL
JUL 25 1994
DEPT. OF JUSTICE

DATE: July 25, 1994

SUBJECT: Disclosures of Social Security Numbers; Neb. Rev. Stat. § 71-604.05 (Supp. 1993); Family Support Act of 1988, § 125

REQUESTED BY: Mary Dean Harvey, Director
Department of Social Services

WRITTEN BY: Don Stenberg, Attorney General
Royce N. Harper, Assistant Attorney General

## Question

1. Does Neb. Rev. Stat. § 71-604.05 prevent the parents' social security numbers, that are furnished for their children's birth certificates, from being used by the Department of Social Services as an element in a computer matching program which is used to further determine the identities of the parents?

2. Does Neb. Rev. Stat. § 71-604.05 prevent the parents' social security numbers, that are furnished for their children's birth certificates, from being used by the Department of Social Services as an element in a computer matching program which is used to obtain from the Department of Health the health risk data contained in the Bureau of Vital Statistics birth certificate records?

## Answer

Question No. 1; No.

Question No. 2; No.

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## BACKGROUND

The Family Support Act of 1988 (P.L. 100-485, Section 125 requires that in the administration of any law involving the issuance of birth certificate, each parent must furnish his or her social security number. The use of the social security number obtained through the birth record is to be limited to child support enforcement purposes. Neb. Rev. Stat. § 71-604.05 (1993 Supp.) implemented this requirement in the State of Nebraska pursuant to federal law.

The Department of Social Services has already received the parents' social security numbers directly as a requirement for obtaining assistance. The Department of Social Services is proposing that it be able to take parent social security numbers from its records -- in cases that are not related to child support enforcement actions -- and to compare those numbers with the social security numbers of the parents as found on birth certificates filed with the Bureau of Vital Statistics of the Department of Health. Comparisons would also be made between these records as to each parent's last name, first name, middle initial, sex and date of birth in order to further determine and establish the identities of these individuals.

When the Department of Social Services is aware that a recipient is expecting a child, it will request a social security number for the child from the Social Security Administration -- derived from birth certificate information from the Bureau of Vital Statistics and use the social security number of the child in adding the child to the assistance unit without having to rely upon information from the parents. The process would essentially be one of matching and verification.

The concern of the Department of Social Services is whether § 71-604.05 would allow such disclosure. The Department of Health and Human Services has issued an opinion that there is no absolute prohibition under federal law for the use described by Nebraska of social security numbers disclosed to a state agency other than the Child Support Enforcement Agency. However, the opinion from the Department of Health and Human Services stated that federal law did prohibit such use unless individuals were properly notified of the potential use of the social security numbers at the time they were disclosed to the state.

## DISCUSSION

### Questions 1 and 2

Neb. Rev. Stat. § 71-604.05(2)(b) provides, in pertinent part, that social security numbers:

> shall only be used for the purpose of enforcement of child support orders in Nebraska as permitted by Title IV-D of the Social Security Act, as amended, or as

permitted by section 7(a) of the Privacy Act of 1974, as amended.

Therefore, the uses in questions are allowable only if they are permitted by section 7(a) of the Privacy Act of 1974, as amended.

Section 7(a) of the Privacy Act of 1974 provides that:

> (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.

5 U.S.C. § 552a Note (The Privacy Act of 1974 is also known as Pub. L. 93-579).

Since the uses in question involve the use of social security numbers that have <u>already been disclosed</u> to the Department of Social Services (and these numbers would apparently not be further disclosed to other agencies, but would rather be used as an element in a computer matching program), it is apparent that the uses in question are allowable under section 7(a)(1) because individuals would not be denied rights, benefits, or privileges because of <u>refusal to disclose</u> their social security numbers. Even if disclosure was an issue, there is nothing mentioned in the department of Social Services' descriptions of the uses in question that would indicate that individuals would be denied rights, benefits, or privileges because of their refusal to disclose or allow computer matching of their social security numbers. Also, while information on this issue was not given, the first issue in question (which further determines an individual's identity) may also be allowable under section 7(a)(2)(B) if the Department of Social Services meets the criteria of section 7(a)(2)(B) quoted, ***supra***.

Therefore, since the uses in question are allowable under the explicit wording of section 7(a), the uses in question are also allowable under Neb. Rev. Stat. § 71-604.05. However it should be noted that while the uses in question are allowable under the

explicit wording of section 7(a), the legislative history of section 7(a) would probably stand against the expansion of the use of social security numbers that is caused by the uses in question. Op. Neb. Att'y Gen. 239 (1984) states that, "The legislative history surrounding the enactment of Section 7 indicates Congress sought to limit the growing use of social security numbers by both federal and local government agencies. . . . *See*, 5. Rep. No. 1183, 93rd Cong., 2d Session reprinted in [1974] U.S.Code Cong. and Ad. News 6916, 6944."

While it appears that the uses in question are allowable under the explicit wording of section 7(a) (and therefore also allowable under Neb. Rev. Stat. § 71-604.05), section 7(b) of the Privacy Act of 1974 could pose some serious problems to the uses in question.

Section 7(b) provides that:

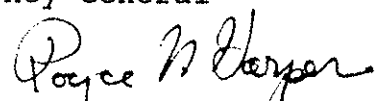
> Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

5 U.S.C. 552a Note.

Therefore, unless the parents whose social security numbers are to be used for the uses in question, were informed of the uses in question as required by section 7(b), the Department of Social Services may not use their social security numbers for the uses in question.

Sincerely,

DON STENBERG
Attorney General



Royce N. Harper
Senior Assistant Attorney General

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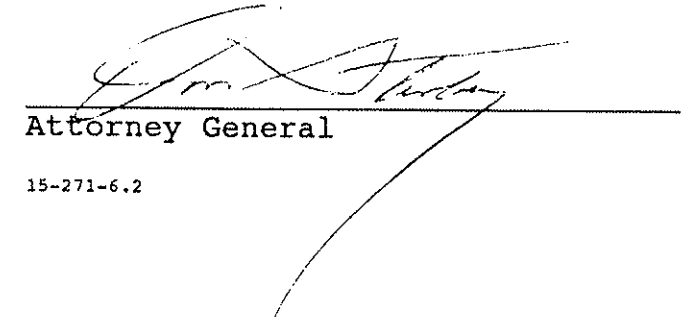

Attorney General

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