

Joint Meeting of the Personal Identifying Information Subcommittee of the Council and  
the SSN Subcommittee of JCOTS  
Meeting Summary  
Wednesday, November 12, 2008

The FOIA Council's Personal Identifying Information (PII) Subcommittee<sup>1</sup> met jointly with the JCOTS SSN Subcommittee<sup>2</sup> on Wednesday, November 12. The joint group reviewed the results of the social security number surveys received from state and local agencies, and reviewed potential legislation for recommendation to the FOIA Council and JCOTS for consideration.

### **Update on Social Security Number Surveys**

Staff presented an update on the social security number surveys received from state and local agencies. Pursuant to Chapters 840 and 843 of the 2008 Acts of Assembly, which were recommendations of the joint FOIA Council/JCOTS subcommittee, all state agencies, all counties, all cities, and all towns with a population of more than 15,000 were required to complete a survey indicating each instance where the agency or locality collected social security numbers. For each instance of collection, the survey asked if the collection was currently authorized by law, and if it was essential to the agency or locality's mission. The local surveys were submitted to the Virginia Municipal League and the Virginia Association of Counties by September 10, 2008; the state agency surveys were due to the FOIA Council and JCOTS by October 1, 2008.

Staff reported that over 500 survey responses were received. The responses were very thorough and complete, and provided a wealth of information for review and analysis. Preliminary review of the surveys indicate that various agencies and localities had noted that in particular instances, they had determined that a current collection practice was not necessary, and that the collection had ceased or was in the process of being eliminated. Some responses also raised concerns about the practical effects of the new law that would limit future collection of social security numbers.

Each survey that was received was reviewed by staff to verify whether collection was currently authorized by law. Each unique instance of collection was entered into a spreadsheet. Currently, the spreadsheet is about 40 pages in length. The collection appears to fall in a few broad categories: professional regulation, education, personnel, law enforcement and courts, health/medicine, social services, taxes and revenues, and miscellaneous (which includes DMV, housing, and several stand-alone instances of collection). Analysis of the surveys raised several other issues that require continued substantive review, such as: how specific of an authorization is necessary to comply with the new law, should the new law only prohibit the collection of the entire social security

---

<sup>1</sup> Senator Houck, Delegate Griffith, and subcommittee members Spencer, Treadway, and Whitehurst were present. Stephanie Hamlett was present representing subcommittee member Courtney Malveaux. Subcommittee members Malveaux and Wiley were not present.

<sup>2</sup> Delegate May, Delegate Alexander, and Senator Watkins were present. Delegate Nixon was not present.

number (as opposed to collection, for example, of only the last four digits), and should the joint subcommittee recommend statutory changes for situations where an agency determines collection necessary but is not currently authorized? If additional authorizing legislation is determined to be necessary, should the legislation be specific or general in nature?

### **Suggested Amendments to the Government Data Collection & Dissemination Practices Act**

Staff presented a bill that would make several technical amendments to the Government Data Collection & Dissemination Practices Act (GDCDPA) in light of the SSN survey responses and review of Chapters 840 and 843 of the 2008 Acts of Assembly. The proposed amendments do present two substantive changes. The first change would clarify that the recently enacted prohibition on collection social security numbers without authorization would apply to the collection of the entire social security number, and not a portion thereof. Without objection, the joint subcommittee agreed to change this so that the law would apply to the collection of any portion of a social security number. The second change would extend the implementation date to July 1, 2010. Currently, the prohibitions are set to become effective on July 1, 2009. However, due to the response from the social security number surveys and the immense amount of data to process and verify, staff recommended that an additional year might be necessary to thoroughly review and process all of the implementation issues. The joint subcommittee voted to recommend the proposed changes to the GDCDPA.

### **Consideration of Bills Referred by the 2008 Session**

Two bills creating exemptions for the disclosure of social security numbers on public records were referred to the FOIA Council and JCOTS for further review. HB 1096 (Sickles) would prohibit the release of social security numbers on public records, but would allow the last four digits to be released for purposes of identity verification to certain entities, such as the press, private investigators, and data aggregators. HB 1102 (Sickles) would create a FOIA exemption for social security numbers. As with all FOIA exemptions, the social security numbers exemption would be discretionary, and would allow an agency to withhold the social security numbers.

Public comment was heard regarding public access to social security numbers. B.J. Ostegren stated that she had researched the idea of allowing access to only the last four digits of a social security number, and that a person can do a lot with the last four digits, such as access a credit report (from which the entire nine digits can then be obtained). She suggested that access to the last three digits only might be a better solution. She also indicated that she believed that social security numbers should be protected from public access in documents subject to FOIA. Audrey Robinson, with Reed-Elsevier, said that her company provides products used by law-enforcement, debt collectors, and financial institutions, and for their purposes, the more complete identifiers they can use, the better the product. However, they would not oppose legislation that would allow access to the last four digits. Mike Stollenwerk with the Fairfax County Privacy Council said that

without a law allowing social security numbers to be redacted from public records, agencies are currently in a quandary. If they redact the numbers, they are violating FOIA, but if they provide the numbers, they are violating federal law. Ginger Stanley with the Virginia Press Association said that complete social security number redaction would cause a problem for the press, but that keeping three or four digits in the public record would solve these problems.

Senator Houck said that in light of the information received in the survey responses, he believed that social security numbers should be protected. However, in light of the current fiscal situation causing agency reductions, he was concerned about the additional burden that requiring redaction might cause. Other subcommittee members indicated that the public doesn't understand that social security numbers are not currently protected, and some agencies are currently redacting social security numbers without specific authorization. Senator Houck asked the agencies represented in the audience to comment on what kind of burden would be created by requiring social security numbers to be redacted from public records prior to dissemination. The general consensus was that it would not be a burden, as it would fall under the existing FOIA requirements allowing five days to respond to a records request and that actual costs were allowed to be collected under FOIA.

The joint subcommittee agreed to pursue discussion of HB 1096, the bill that mandates redaction of social security numbers contained in public records, and to leave HB 1102, the bill that creates a discretionary FOIA exemption, on the table. In turning to HB 1096 specifically, questions were raised about the language that would allow the last four digits to be released to the press, private investigators, and data aggregators for verification purposes. Delegate Griffith said that the provision concerning the press raised questions, as the proliferation of electronic media makes it difficult to determine who is considered a news-gathering organization. In light of this concern, the joint subcommittee recommended HB 1096, but would allow anyone to receive the last four digits of a social security number for verification purposes.

The final bill, SB 529 (Houck) concerning access to concealed carry handgun permits, introduced in 2008 as a recommendation of the Council, was discussed by the PII Subcommittee. The Subcommittee unanimously agreed to again recommend SB 529 as introduced in 2008 because it reflects the proper balance between privacy and public access. The bill would require the Department of State Police (DSP) to withhold from public disclosure permittee information submitted to the DSP for purposes of entry into the Virginia Criminal Information Network, with a limited exception for access by law-enforcement agencies. Records of the names and addresses of holders of concealed weapons permits issued by the DSP, however, to out-of-state persons would be publicly available from DSP. Permittee records will still be open to the public at each circuit court where the permits are issued.

The joint FOIA Council/JCOTS subcommittee was adjourned. The FOIA Council will meet on December 1 to review legislative recommendations, and JCOTS will meet on December 2 to review legislative recommendation.