

**LETTER OPINION
2004-L-09**

January 30, 2004

Ms. Carol Olson
Executive Director
Department of Human Services
600 E Boulevard Ave Dept 325
Bismarck, ND 58505-0250

Dear Ms. Olson:

Thank you for your letter asking whether N.D.C.C. § 50-06-15 authorizes the Department of Human Services (DHS) to disclose an individual's social security number in connection with the administration of the Department's programs and services.

Section 44-04-28, N.D.C.C., enacted in 2003, states in part: "Social security numbers in the possession of a public entity are confidential . . . [but] may be released as authorized in this section or by other state or federal law." 2003 N.D. Sess. Laws ch. 382, § 9(1) (emphasis added). This law does not prevent an individual's social security number from being used as an identification designation in connection with a license or the receipt of benefits. Rather, the legislation seeks to reduce the risk of identity theft by making social security numbers contained in any record of a public entity a "confidential" record not subject to disclosure, except as authorized by law. See Hearing on H.B. 1092 Before the Senate Comm. on Industry, Business, and Labor, 2003 N.D. Leg. (Mar. 12).

Several federal statutes specifically require DHS to gather and use an individual's social security number to administer various programs such as Medicaid and Food Stamps. See 42 U.S.C. § 1320b-7(a)(1) ("[T]he State shall require . . . that each applicant for or recipient of [Medicaid or Food Stamp] benefits . . . furnish to the State his social security account number . . . and the State shall utilize such account numbers in the administration of that program"). This is just the sort of federal authorization anticipated by N.D.C.C. § 44-04-28. According to DHS, however, not all programs administered by it are governed by federal laws. For those programs DHS relies on N.D.C.C.

§ 50-06-15 as its authority to disclose information it obtains from applicants and recipients of benefits.

Section 50-06-15, N.D.C.C., provides:

It is a class A misdemeanor for any person to disclose, authorize, or knowingly permit, participate in, or acquiesce in the disclosure of any records or information concerning persons applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department when such information is derived directly or indirectly from records, papers, files, or communications received in the course of the administration of any such program or in the performance of official duties, except that such records and information may be used in the administration of any such program and as specifically authorized by the rules and regulations of the department.

According to DHS, social security numbers are among the information DHS collects from persons who apply for or receive assistance from DHS. The rules adopted by DHS limit the use or disclosure of information to “purposes directly connected with the administration” of numerous DHS programs. N.D.A.C. § 75-01-02-01. For the majority of DHS’s programs, purposes of administration are described as “establishing of eligibility; determining the amount of assistance; providing services for applicants and recipients; and the investigation and prosecution of any criminal or civil proceeding conducted in connection with the administration of any such programs.” Id.

Section 50-06-15, N.D.C.C., prohibits DHS from disclosing information it collects except when the information is used in the administration of DHS’s programs and as specifically authorized by department rules.¹ Therefore, it is my opinion that N.D.C.C. § 50-06-15 constitutes “other law” as specified in N.D.C.C. § 44-04-28 and authorizes

¹ It is worth noting that many of the persons who receive confidential information from DHS (e.g., county social service offices, schools, and hospitals) are themselves obligated to safeguard the privacy of confidential information. A county social service office is a “public entity” subject to N.D.C.C. § 44-04-28; client records disclosed to a school will be treated as “educational records,” which, generally, may not be disclosed without the authorization of a student’s parent, 20 U.S.C. § 1232g(b)(1) and 34 C.F.R. § 99.30; and individually identifiable client information that contains health information and is disclosed to a hospital will be treated as “protected health information,” which is confidential under the HIPAA privacy rule. 45 C.F.R. § 164.502(a).

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DHS to disclose social security numbers in the administration of its programs as specified in its rules.

Sincerely,

Wayne Stenehjem
Attorney General

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