



February 5, 2001

The Honorable Elton Bomer
Secretary of State of Texas
P.O. Box 12697
Capitol Station
Austin, Texas 78711

Open Records Decision No. 672

Re: Whether section 521.044 of the Transportation Code prohibits the Texas Department of Public Safety ("DPS") from including an individual's social security number in the categories of information that DPS provides to the Secretary of State pursuant to section 62.001 of the Government Code. (ORQ-58)

Dear Secretary Bomer:

Pursuant to section 402.042 of the Government Code, you ask whether section 521.044 of the Transportation Code prohibits the Texas Department of Public Safety ("DPS") from including an individual's social security number in the categories of information that DPS provides to the Secretary of State pursuant to section 62.001 of the Government Code.

Section 62.001 of the Government Code requires DPS to send driver's license information to the Secretary of State each year so that an updated jury wheel system may be maintained. Subsection (f) of section 62.001 states:

The Department of Public Safety shall furnish a list to the [S]ecretary of [S]tate that shows the names required under Subsection (a)(2) and that contains any of the information enumerated in Subsection (c) that is available to the department, including citizenship status and county of residence. The list shall exclude the names of convicted felons, persons who are not citizens of the United States, persons residing outside the county, and the duplicate name of any registrant. The department shall furnish the list to the [S]ecretary of [S]tate on or before the first Monday in October of each year.

Gov't Code § 62.001(f). Information enumerated in subsection (c) includes an individual's social security number. You inform us that after your office receives the driver's license data, you merge the DPS data with county voter registration data to create and update the jury wheel. You inform us that social security numbers are an essential component to eliminate

duplicate names between the two databases, since sixty percent of the duplications are confirmed by matching social security numbers.

You inform us that DPS has told you that it will no longer supply social security numbers to your office because of a prohibition contained in subsection (a) of section 521.044 of the Transportation Code, which states:

(a) Information provided on a driver's license application that relates to the applicant's social security number may be used only by the department or disclosed only to:

(1) the child support enforcement division of the [A]ttorney [G]eneral's office; or

(2) another state entity responsible for enforcing the payment of child support.

Transp. Code § 521.004(a). The question is whether the limiting language of section 521.044 of the Transportation Code preempts the mandate in section 62.001 of the Government Code. We conclude that it does not.

On its face, section 521.044 of the Transportation Code authorizes the disclosure of social security numbers *only* to (1) the child support enforcement division of the Attorney General's office, or (2) another state entity responsible for enforcing the payment of child support. The Code Construction Act states that "[w]ords and phrases [in code provisions] shall be read in context and construed according to the rules of grammar and common usage." Gov't Code § 311.011. The word "only" means "exclusively[,] solely." WEBSTER'S II NEW COLLEGE DICTIONARY 765 (1995). Thus, the plain language of section 521.044 prohibits DPS from disclosing social security numbers to any entity other than those listed in the statute. The language of section 521.044 of the Transportation Code therefore directly conflicts with the mandate of section 62.001 of the Government Code.

The Code Construction Act provides that "if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails." Gov't Code § 311.025(a). Because section 521.044 of the Transportation Code and section 62.001 of the Government Code are irreconcilable, the question is which of them is the latest in date of enactment.

The original language of section 521.044 of the Transportation Code was enacted as an addition to article 6687b, Vernon's Texas Civil Statutes, in 1993.¹ It was codified in 1995

¹See Act of May 28, 1993, 73rd Leg., R.S., ch. 783, § 1, 1993 Tex. Gen. Laws 3060.

as section 521.044 of the Transportation Code in a nonsubstantive revision of statutes relating to transportation,² and amended in 1997³ and again in 1999.⁴ Section 62.001 of the Government Code was first enacted as a nonsubstantive codification of existing law in 1985.⁵ It was amended in 1991 to include the collection of social security numbers, among other things,⁶ and amended again in 1997⁷ and 1999.⁸

When subsection (f) of section 62.001 of the Government Code was amended in 1999, it was re-enacted in 1999.⁹ Section 521.044 of the Transportation Code was also amended in 1999,¹⁰ however, only two subsections were added and no other provisions of the statute were re-enacted.¹¹ Because the two subsections added to section 521.044 in 1999 do not conflict with subsection (f) of section 62.001, they are irrelevant to the later-in-time analysis. Only subsection (a) of section 521.044, which was last enacted in 1995, conflicts with subsection (f) of section 62.001 of the Government Code. Therefore, subsection (f) of section 62.001 of the Government Code, amended in 1999, is the statute later in date of enactment in relation to subsection (a) of section 521.044 of the Transportation Code.

According to its plain terms, subsection (a) of section 521.044 of the Transportation Code authorizes the disclosure of social security numbers *only* to (1) the child support enforcement division of the Attorney General's office, or (2) another state entity responsible for enforcing the payment of child support. This directly conflicts with subsection (f)

²See Act of April 21, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Gen. Laws 1025, 1548.

³See Act of May 15, 1997, 75th Leg., R.S., ch. 420, § 28, 1997 Tex. Gen. Laws 1660, 1667.

⁴See Act of May 27, 1999, 76th Leg., R.S., ch. 556, § 77, 1999 Tex. Gen. Laws 3058, 3086, and Act of May 30, 1999, 76th Leg., R.S., ch. 1189, § 18, 1999 Tex. Gen. Laws 4153, 4161.

⁵See Act of May 17, 1985, 69th Leg., R.S., ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 2008.

⁶See Act of May 17, 1991, 72nd Leg., R.S., ch. 442, § 1, 1991 Tex. Gen. Laws 1610.

⁷See Act of May 15, 1997, 75th Leg., R.S., ch. 425, § 1, 1997 Tex. Gen. Laws 1684.

⁸See Act of May 22, 1999, 76th Leg., R.S., ch. 640, § 1, 1999 Tex. Gen. Laws 3210.

⁹The Legislature declared: "Be it enacted by the Legislature of the State of Texas . . ." See Act of May 22, 1999, 76th Leg., R.S., ch. 640, § 1, 1999 Tex. Gen. Laws 3210. Article III, section 36 of the Texas Constitution provides: "No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length." Thus, every time a statute is amended by the Legislature, the amended provision is re-enacted in its entirety.

¹⁰See Act of May 27, 1999, 76th Leg., R.S., ch. 556, § 77, 1999 Tex. Gen. Laws 3058, 3086, and Act of May 30, 1999, 76th Leg., R.S., ch. 1189, § 18, 1999 Tex. Gen. Laws 4153, 4161.

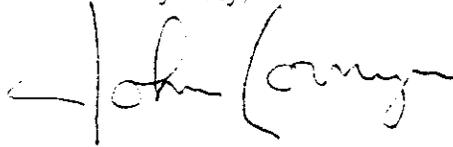
¹¹The 76th Legislature added two subsections (f) to section 521.044 of the Transportation Code.

of 62.001 of the Government Code, which requires DPS to furnish social security numbers to the Secretary of State. Because the conflict between these two code provisions is irreconcilable and because subsection (f) of section 62.001 of the Government Code was later in date of enactment, we conclude that subsection (f) of section 62.001 of the Government Code prevails as an exception to subsection (a) of section 521.044 of the Transportation Code. *See* Gov't Code § 331.025(a) (if statutes enacted at different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails). Therefore, notwithstanding the limiting language of section 521.044 of the Transportation Code, DPS must still furnish the Secretary of State with social security numbers that appear on driver's license applications on or before the first Monday in October of each year.

S U M M A R Y

Subsection (a) of section 521.044 of the Transportation Code authorizes the use and disclosure of social security numbers that appear on driver's license applications in the custody of the Texas Department of Public Safety ("DPS") *only* to (1) the child support enforcement division of the Attorney General's office, or (2) another state entity responsible for enforcing the payment of child support. Subsection (f) of section 62.001 of the Government Code requires DPS to furnish social security numbers in its possession to the Secretary of State on or before the first Monday of October of each year for the purpose of reconstituting the jury wheel. Because the two statutes are irreconcilable and because subsection (f) of section 62.001 of the Government Code is the later-enacted provision, it prevails as an exception to subsection (a) of section 521.044 of the Transportation Code.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written over a horizontal line.

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