



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1996

The Honorable Tim Cone
Criminal District Attorney
Upshur County Justice Center
405 North Titus Street
Gilmer, Texas 75644

Letter Opinion No. 96-093

Re: Whether a tax assessor-collector may refuse to issue a certificate of title if the applicant refuses to divulge his social security number (ID# 38712)

Dear Mr. Cone:

You ask whether a county tax assessor-collector can refuse to issue a certificate of title for a motor vehicle if the applicant refuses to disclose his or her social security number.¹ In our view, section 27(a) of article 6687-1, V.T.C.S., now repealed and recodified as chapter 501 of the Transportation Code, gives the assessor-collector in a county in which an automated registration system has been implemented this authority. Moreover, because the statute concerns the administration of a motor vehicle registration law, the requirement of disclosure does not violate section 7(a) of the Privacy Act of 1974. 5 U.S.C. § 552a note (Act of Dec. 31, 1974, P.L. 93-579, § 7, 88 Stat. 1909). However, section 7(b) of the Privacy Act does require the assessor-collector to inform the applicant "whether th[e] disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

Act of May 26, 1995, 74th Legislature, chapter 655, section 8.05, which became effective on September 1, 1995, adds section 27a to article 6687-1, V.T.C.S., now repealed and recodified as chapter 501 of the Transportation Code. Section 27a provides:

In a county in which the [Department of Transportation's] automated registration and title system has been implemented, the department shall require an individual applying for a certificate of title to give the applicant's social security number. The department or county shall enter an applicant's social security number in the department's electronic database but may not print the number on the certificate of title.

¹Actually, the tax assessor-collector issues a title receipt. Transp. Code § 501.024. It is the Department of Transportation, to which the assessor-collector mails the title receipt along with evidence of title, which issues the certificate of title. *Id.* § 501.027. Since the issuance of the title receipt is a condition precedent to the issuance of the certificate of title, one may loosely describe the assessor-collector's refusal to issue the title receipt as a refusal to issue a certificate of title.

The certificate of title is not issued by the Department of Transportation until after it receives the title receipt and evidence of title from the assessor-collector. Transp. Code § 501.027. The department may refuse to issue a certificate if “the applicant failed to furnish required information requested by the department. . . .” *Id.* § 501.051. The giving of a social security number is one of “the requirements of . . . chapter [501 of the Transportation Code],” which must be met before the assessor-collector issues a title receipt. By the plain language of section 27a in conjunction with sections 501.024, 501.027, and 501.051, then, the assessor-collector may refuse to issue a title receipt if the applicant does not give his or her social security number as required, with the result that the applicant will not receive a certificate of title. The disclosure of the social security number in this instance is mandatory. Moreover, a refusal to issue the certificate does not violate the Privacy Act of 1974.

Section 7 of the Privacy Act, 5 U.S.C. § 552a note provides:

(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.

(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.

As Attorney General Opinion DM-286 pointed out, a 1976 amendment to the Social Security Act effectively expands the exception in subsection (a)(2)(B) of section 7 of the Privacy Act. Attorney General Opinion DM-286 (1994) at 3. That amendment provides in relevant part:

(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver’s license, or motor vehicle registration law within its jurisdiction, utilize the social security

account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual [to furnish such social security account number].

.....

(vi) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above.

42 U.S.C. § 405(c)(2)(C).

Accordingly, a government agency may require the disclosure of a social security number "in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law" without violating section 7a of the Privacy Act. Chapter 501 of the Transportation Code is such a motor vehicle registration law, and therefore section 7a does not prohibit the assessor-collector from requiring the applicant for a certificate of title to disclose his or her social security number.

However, as Attorney General Opinion DM-286 points out, section 7b still applies. *See* Attorney General Opinion DM-286 (1994) at 5 (and cases cited therein). Accordingly, while the assessor-collector may require the disclosure, he or she must also inform the applicant whether the disclosure is mandatory, as in this case it is, on what legal basis the number is required, and the use that will be made of the number.²

To conclude then, by the terms of section 27a of article 6687-1, V.T.C.S., now repealed and recodified as chapter 501 of the Transportation Code, a tax assessor-collector may refuse to issue a title receipt to an applicant who refuses to disclose his or her social security number. Such a request for disclosure does not violate section 7(a) of

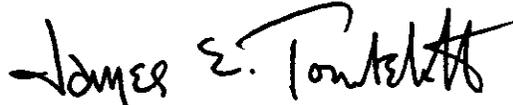
²In our view, a section 7b notice prepared by any entity subject to the Open Records Act must inform the person from whom the social security number is solicited if the information is subject to disclosure under the act. Social security numbers collected pursuant to section 27a are not subject to such disclosure. 42 U.S.C. § 405(c)(2)(C)(viii)(I) provides, "Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record." The numbers at issue here are solicited on the basis of a statute enacted on May 26, 1995. Accordingly, they are confidential as a matter of law under section 552.101 of the Open Records Act. *See* Open Records Decision No. 622 (1994).

the Privacy Act of 1974. However, under the terms of section 7(b) of the Privacy Act, the assessor-collector must, when requesting the social security number, "inform [the applicant] 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."

S U M M A R Y

By the terms of section 27a of article 6687-1, V.T.C.S., now repealed and recodified as chapter 501 of the Transportation Code, a county tax assessor-collector may refuse to issue a title receipt to an applicant who refuses to disclose his or her social security number. Such a request for disclosure does not violate section 7(a) of the Privacy Act of 1974. However, under the terms of section 7(b) of the Privacy Act, the assessor-collector must, when requesting the social security number, "inform [the applicant] 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."

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee