

# MEMORANDUM

## State of Alaska Department of Law

TO: Barbara Miklos, Director  
Child Support Enforcement Division

DATE: April 8, 1999

FILE NO.: 663-99-0160

TELEPHONE NO.: (907) 465-3600

SUBJECT: When and under What  
Circumstances May the  
Child Support Enforcement  
Division Release Social  
Security Numbers?

FROM: Dan N. Branch  
Assistant Attorney General  
Human Services Section-Juneau

### QUESTION

When and under what circumstances may the Child Support Enforcement Division (“CSED”) disclose social security numbers in its files or computer database?

### SHORT ANSWER

Social security numbers are protected by federal law and may not be disclosed unless federal law allows disclosure. In general, CSED may not disclose social security numbers in its files or computer database unless the disclosure is necessary for the purpose of establishing or collecting child support obligations or locating persons who owe child support. A social security number may be disclosed for other purposes if it was not obtained from a federal tax return, the Social Security Administration, or the Bureau of Vital Statistics. In such a case, CSED may also disclose the number to locate absent parents who do not owe child support, establish paternity, or respond to an information request from a state Temporary Assistance for Needy Families (“TANF”) or Medicaid agency. Finally, if the social security number was obtained through new hire reporting, CSED may disclose the number to other state agencies if needed to verify eligibility for certain specified state and federal programs.

## LEGAL ANALYSIS

### General Rule Against Disclosure

With limited exceptions, CSED is generally prohibited by state and federal law from disclosing social security numbers. This would include disclosure to parents, members of the public, or other state agencies. This rule derives first and foremost from the Social Security Act, which requires government agencies to keep social security numbers confidential if the numbers were obtained by the agency pursuant to any provision of law enacted after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I). CSED obtains social security numbers by operation of a network of laws, most if not all of which were enacted after October 1, 1990. CSED may not always know under which statute it has obtained a social security number. Therefore, unless disclosure falls within one of the exceptions discussed below, we would recommend that CSED not disclose the social security number.

Social security numbers may also fall within the general confidentiality requirements imposed under the federal child support laws. Each state must include safeguards in its child support plan to protect the privacy rights of the parties to the child support cases in which the agency is involved. *See* 42 U.S.C. § 654(26). Likewise, CSED must have procedures in place to safeguard the data contained in its automated database (the NSTAR system). *See* 42 U.S.C. § 654a(d). Information that CSED receives from the Federal Parent Locator System must also enjoy certain privacy safeguards. *See* 42 U.S.C. § 653(b).

Given these confidentiality requirements, CSED should not disclose social security numbers unless disclosure is permitted under one of the exceptions described in the following paragraphs. Unless disclosure of a social security number is permitted under one of the exceptions, the numbers should always be removed prior to disclosing information from CSED's files or the NSTAR system. This would include disclosures in response to requests from parents for copies of their files, FOIA requests from third parties, or discovery requests as a part of ongoing litigation.

### Exceptions to the Rule Against Nondisclosure

There are two primary exceptions to the general rule against nondisclosure: (1) disclosure when necessary for child support purposes and (2) disclosure to other state agencies for non-child support purposes. With some limitations, the first exception is available regardless of how CSED obtained the social security number. The availability of the second exception, however, depends on the source from which CSED obtained the social

security number.

Disclosure for Child Support Purposes

In general, CSED may disclose social security numbers, regardless of their source, if necessary to carry out or administer the state child support program. 45 C.F.R. § 303.21; 42 U.S.C. § 654a(d)(1)(A). There are, however, two limitations to this general rule.

First, if the information was obtained from a federal tax return or the Social Security Administration, CSED may use the social security number only for the purpose of establishing child support obligations, collecting child support obligations, and locating individuals owing child support obligations. 26 U.S.C. § 6103(l)(6)(C); 26 U.S.C. § 6103(l)(8)(B). Thus, if the social security number is obtained from a federal tax return or the Social Security Administration, CSED may not disclose the number for the purpose of locating an absent parent who does not yet owe child support or for the purpose of establishing paternity.

Second, if CSED obtained the social security number from the state Bureau of Vital Statistics, CSED may disclose it only “for the enforcement of child support orders in effect in the State.” 42 U.S.C. § 405(c)(2)(C)(ii). The Federal Office of Child Support Enforcement (“OCSE”) has interpreted this statute to allow disclosure of social security numbers for the purpose of locating absent parents and establishing paternity and support orders because these actions are essential to the enforcement of support obligations. *See* OCSE Action Transmittal 90-04.

The challenge, of course, is determining when a disclosure is “necessary” to establish a child support obligation, collect support, or locate an absent parent. One obvious example is when an absent parent requests the children’s social security numbers in order to enroll the children in his or her employer-provided health coverage. May CSED justify disclosure of the numbers to such a parent as part of its effort to collect child support from the parent? The answer is “yes” because federal law requires that each Alaska order to pay child support contain a provision for health care coverage for the children. *See* 42 U.S.C. 666(a)(19). CSED is obligated to enforce the health care portion of the child support as part of its child support collection efforts. If a parent were unable to comply with the health care provision without the social security numbers of his or her children, disclosure would be necessary for enforcement of the support obligation. Therefore, CSED would be permitted to disclose the social security numbers of the children in this situation.

Another example concerns the inclusion of social security numbers on the face

of the child support order. Given that federal law allows agencies to maintain the numbers in the child support file, rather than on the face of the order, it would not be necessary to disclose social security numbers on the face of the orders in order to establish or collect support. Likewise, it would rarely be necessary for purposes of establishing or collecting support to disclose social security numbers in response to a FOIA or discovery request. On the other hand, if the social security number was used in determining the amount of a proposed modification of the support order, it might be “necessary” in very limited circumstances to disclose the social security number as a part of the motion for modification.

As the above examples illustrate, CSED will need to consider carefully under what circumstances the disclosure of social security numbers is “necessary” to accomplish the agency’s establishment and collection of support and the location of absent parents. CSED may wish to provide some guidance to caseworkers on making this determination. We would be more than willing to be involved in preparing any such guidance.

#### Disclosure to Other Agencies for Non-Child Support Purposes

Under 45 C.F.R. § 303.21, CSED may use or disclose information concerning the applicants or recipients of support enforcement services to other agencies for use in the following programs:

- State TANF
- Child Welfare Services
- Child Support
- Foster Care and Adoption Assistance
- Job Opportunities and Basic Skills Training
- Old Age Assistance
- Assistance to the Blind
- Permanent and Total Disability
- SSI for Aged, Blind, or Disabled
- Medical Assistance
- Social Service Block Grants
- Any Civil or Criminal Action Relating to the Administration of a Child Support Program
- Any Federal or Federally Funded Program Providing Assistance to Individuals on the Basis of Need. *See* 45 C.F.R. § 303.21.

At first reading, this regulation would appear to allow CSED to disclose information, including social security numbers, to any agency, which could use them in the

above-mentioned programs. However, the authority granted in 45 C.F.R. § 303.21 is limited by several other federal statutes, which limit disclosure of information to other agencies if the social security numbers are obtained from certain sources. In particular, if the social security number is obtained from a federal tax return, directly from the Social Security Administration, or from the state Bureau of Vital Statistics, CSED may not disclose the number for any non-child support purposes. *See* 26 U.S.C. § 6103(l)(6)(C); 26 U.S.C. § 6103(l)(8)(B); 42 U.S.C. § 405(c)(2)(C)(ii). This limitation continues even after the social security number is entered on the NSTAR system. *See* 42 U.S.C. § 654a(f).

If the social security number did not come from a federal tax return, the Social Security Administration, or the Bureau of Vital Statistics, CSED may be permitted to disclose the numbers pursuant to 45 C.F.R. § 303.21. In addition, at least two other federal statutes require disclosure of social security numbers to other agencies for non-child support purposes.

First, under 42 U.S.C. § 653a(h), CSED is required to share information obtained from new hire reporting, which includes the social security numbers of new hires, with other agencies for the purpose of verifying eligibility for the following programs:

- State TANF
- State Medicaid
- Unemployment Compensation
- Employment Security
- Worker's Compensation
- Food Stamps
- Any state program approved under subchapters I, X, XIV, or XVI of the Social Security Act, which includes:

- Old Age Assistance
- Grants to States for Aid to the Blind
- Grants to States for Aid to Permanently and totally Disabled

Second, under 42 U.S.C. § 654a, CSED is required to exchange information from its NSTAR system with the state TANF and Medicaid agencies as necessary for CSED to meet its burdens under the Social Security Act and as is necessary for those agencies to perform their duties under the programs. As noted above, however, this authority to disclose information to the state TANF and Medicaid agencies does not apply if the information was obtained from federal tax returns, directly from the Social Security Administration, or the Bureau of Vital Statistics.

Barbara Miklos, Director  
Child Support Enforcement Division

April 8, 1999  
Page 6

State Law Mandates

In response to 1996 changes to the Social Security Act, the Alaska Legislature amended many sections of the Alaska Statutes to require applicants for various state licenses to provide their social security numbers. *See* ch. 87, SLA 1997; ch. 132, SLA 1998. Social security numbers must also appear in court records of paternity and domestic relations cases.

In each case, the numbers are to be supplied to CSED or the child support agency of another state for child support purposes. *See, e.g.*, AS 28.15.070(g). By implication, this suggests that the social security numbers may not be used (*i.e.*, disclosed) for non-child support purposes. This restriction could conflict with the federal requirement that CSED share information from the NSTAR system with state TANF and Medicaid agencies. *See* 42 U.S.C. § 654a(f)(3). However, state law does not define the phrase, “for child support purposes.” Since 42 U.S.C. § 654a is included in that section of the Social Security Act which defines the duties of state child support agencies, one can argue that satisfying the requirements of 42 U.S.C. § 654a should be seen as a child support purpose. Therefore, disclosing social security numbers to state TANF and Medicaid programs to the extent required by 42 U.S.C. § 654a(f)(3) would not violate the new state law social security provisions.

DNB:ame