

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date July 15, 1975 ✓

To Maynard F. Marsh, Commissioner

Dept. Inland Fisheries and Game

cc Joseph E. Brennan

Dept. Attorney General

Subject Social Security Number on State of Maine Hunting and Fishing Licenses

You have inquired as to whether the Privacy Act of 1974, Public Law No. 93-579 (Dec. 31, 1974), is applicable to the intention of the Department of Inland Fisheries and Game to require applicants for 1976 hunting and fishing licenses to provide their social security numbers to the Department; and if so, you have asked this office's advice as to how the Department may comply with the provisions of the Act. In addition, since this office is also advised that the Department has been gathering social security numbers on its 1975 licenses, this opinion will also review the legality of that practice under the Act.

It would appear, first of all, that the Act does apply both to the Department's intentions to require social security numbers for its 1976 licenses and to its practice of gathering such numbers on its 1975 licenses. Section 7a of the Act provides that a state agency may not refuse any privilege provided by law (such as a hunting or fishing license) because of a person's refusal to disclose his social security number, unless the disclosure is made to an 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. . . ." (emphasis added). The only pertinent statute under which the Department has been or plans to require social security numbers of its license applicants is 12 M.R.S.A. §2304 which reads:

"The commissioner may require an identification number any any other pertinent information, on any or all licenses issued by the department, as he deem necessary." (emphasis added)

This statute, although enacted before January 1, 1975, is entirely discretionary. Thus, in the absense of any implementing regulations requiring the submission of social security numbers, any system established by the Department purporting to require such submissions existing prior to 1975 would not have been required by law and thus could not avail itself of the exemption provisions of the Act. In fact, we are advised by the Department that the only licenses for which social security numbers were requested by the Department before 1975 were those for persons over 70 years of age.\* Even this practice, however, was not required by statute or regulation. Thus all social security numbers collected after January 1, 1975, as well as all numbers which may be collected, are subject to the provision of the Act.

\*In addition, we are advised that 1975 licenses actually went on sales on December 1, 1974, but that persons selling such licenses were advised by the Department by letter merely to encourage, but not require, the submission of social security numbers by applicants.

In order to bring its practices into conformity with the law, therefore, the Department needs advice on two questions: (1) What measures, if any, should be taken to permit the legal collection of social security numbers in the future; and (2) What measures should be taken with regard to numbers already collected?

As to licenses yet to be issued, the Privacy Act is clear:

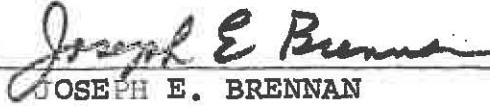
"Any . . . state . . . agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it."  
Section 7(b).

Since the Department's practices are not exempted from the Act, it will not be able to require the submission of social security numbers in the future, but will have to seek voluntary submissions, giving satisfactory notification to applicants of the use to which the numbers will be put. It is this office's understanding that the principal reasons for obtaining licensees' social security numbers are to aid in the retrieval of licenses (filing by known number being more efficient than filing by name) and to assist the Department in insuring that persons who represent themselves to be residents of the state are in fact residents. In particular, in furtherance of this latter aim, the Department may occasionally supply a resident licensee's number to the Bureau of Taxation to permit the Bureau to determine for its own purposes whether the alleged resident is filing a state income tax return. Accordingly, this office suggests the following statement for inclusion on the face of the Department's 1976 licenses and for distribution to all sales agents of the Department to be provided to persons who may not as yet purchased their 1975 licenses:

"The Commissioner of Inland Fisheries and Wildlife is authorized by 12 M.R.S.A. §2304 to request social security numbers of all of the Department's licensees. Disclosure of your social security number is not required by State law. If voluntarily provided, these numbers will be used for intra-departmental purposes only, except that they may be provided to the State Bureau of Taxation to assist in the collection of income taxes from Maine residents."

As to social security numbers already collected without the above notice having been given, the Act is silent, the above quoted section merely specifying that a person may not be denied a license for failing to supply his number. Clearly, if the Department is currently

denying anyone a license for this reason, such license should be issued forthwith. But with regard to numbers already obtained, this office would advise that, in view of the silence of the Act, and in the absence of a request to quash the use of the numbers by the holder, it would not be illegal for the Department to retain such numbers on file. Should such a request materialize, the Department should then honor it either by altering the original license, or by destroying it and issuing a new one. It does not appear that, particularly with regard to numbers collected before January 1, 1975, the Act contemplates any other affirmative action.

  
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JOSEPH E. BRENNAN  
Attorney General