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Bill Analysis
Legislative Service Commission

H.B. 528

126th General Assembly
(As Introduced)

Reps. Fende, Healy, Hartnett, Chandler, Skindell, Driehaus, Williams, S. Patton, Distel, J. McGregor, Reidelbach, Koziura, Woodard, DeGeeter, Perry, Boccieri, Brown, Harwood

BILL SUMMARY

- Excludes social security numbers from the definition of "public record" in the Public Records Law.
- Provides that if a public record contains information that is exempt from the duty to permit public inspection or copying or contains a social security number, the public office or person responsible for public records must make available all of the information within the public record that is not exempt and that is not a social security number.
- Prohibits any public office or person responsible for public records from making available for public inspection or copying any public record that contains a social security number until after the social security number is redacted from the public record.

CONTENT AND OPERATION

Definition of "public record"

Under current law, "public record" generally means records¹ that are kept by any public office,² including but not limited to, state, county, city, village,

¹ *The Records Law (R.C. Chapter 149.) defines "records" as including any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in R.C. 1306.01, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office (R.C. 149.011(G), not in the bill).*

township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-profit entity operating the alternative school pursuant to R.C. 3313.533. The Public Records Law contains a list of specific types of information or records that are not within the definition of "public record." (R.C. 149.43(A)(1).) (See COMMENT.)

The bill adds social security numbers to the types of information or records that are excluded from the definition of "public record" (R.C. 149.43(A)(1)(z)).

Request for public records; redaction of exempt information

Current law generally requires that all public records be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Current law also generally requires that upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. (R.C. 149.43(B)(1).)

The bill provides that if a public record contains information that is exempt from the duty to permit public inspection or copying or contains a social security number, the public office or person responsible for public records must make available all of the information within the public record that is not exempt and that is not a social security number. When making that information available for public inspection or copying, the public office or person responsible for public records must notify the requester of any *redaction* (see definition below) or make the redaction plainly visible. The bill prohibits any public office or person responsible for public records from making available for public inspection or copying any public record that contains a social security number until after the social security number is redacted from the public record. (R.C. 149.43(B)(1).) The bill defines "redaction" as obscuring or deleting any information, including a social security number, that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in R.C. 149.011.³ (R.C. 149.43(A)(11).)

² "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government (R.C. 149.011(A), not in the bill).

³ See footnote 1 for the definition of "record."

COMMENT

R.C. 149.43(A)(1)(v) excludes from the definition of "public record" any records the release of which is prohibited by state or federal law. In *State ex rel. Beacon Journal Publishing Co. v. Akron* (1994), 70 Ohio St.3d 605, the Supreme Court based its decision on this provision in the Public Records Law and ruled that the disclosure of social security numbers would violate the federal constitutional right to privacy. The Court concluded that while social security numbers are "records," they are not "public records" for purposes of the Public Records Law. In reaching this conclusion, the Court used a two-part analysis: a determination of whether the city employees in the case have a legitimate expectation of privacy in their social security numbers and a determination of whether their privacy interests outweigh those interests benefited by disclosure of the numbers. The Court determined that due to the federal legislative scheme involving the use of social security numbers,⁴ the employees have a legitimate expectation of privacy in those

⁴ *According to the Court (at p. 609):*

Section 7 of the Privacy Act of 1974 provides the following:

"(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.

" * * *

"(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." Section 552a note (Disclosure of Social Security Number), Title 5, U.S. Code, . . . Section 7,

The purpose of the Privacy Act of 1974 was "to curtail the expanding use of social security numbers by federal and local agencies and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers." *Doyle v. Wilson* (D. Del. 1982), 529 F. supp. 1343, 1348.

numbers. It found that "the high potential for fraud and victimization caused by the unchecked release of city employee SSNs outweighs the minimal information about government processes gained through the release of the SSNs." (At p. 612.)

HISTORY

ACTION	DATE
Introduced	03-09-06

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Congress when enacting the Privacy Act of 1974 was codifying the societal perception that SSNs should not be available to all. This legislative scheme is sufficient to create an expectation of privacy in the minds of city employees concerning the use and disclosure of their SSNs.

