

In Brief

June 2010

THE ILLINOIS IDENTITY PROTECTION ACT: NEW REGULATIONS ON USE OF SOCIAL SECURITY NUMBERS

Starting July 1, 2010, a new law limits state and local government agencies' ability to use an individual's social security number. The Identity Protection Act¹ ("The Act") also requires each state or local government agency, including school districts, villages, cities and townships, to develop and implement an identity protection policy.

Prohibited Activities

The Act prohibits state and local government agencies from using social security numbers in a number of ways, including public posting or display of numbers; printing the number on any card required to access products or services; requiring transmission of numbers over the Internet, unless using a secure connection or the number is encrypted; and printing the number on any materials mailed to the individual.² Agencies also cannot collect, use, or disclose a social security number from an individual unless required to do so under state or federal law, rules, or regulations, or unless such use is otherwise necessary for the performance of the agency's duties and responsibilities.

FOIA Requests

When agencies respond to requests under the Illinois Freedom of Information Act, social security numbers of individuals must be redacted from information or documents before allowing public inspection or copying.³

Embedded Social Security Numbers

As of December 31, 2009, state and local government agencies are forbidden from embedded or encoding social security numbers in cards or documents.⁴ This includes the use of barcodes, chips, magnetic strips, and other technology. Consequently, agencies cannot simply remove social security numbers and replace them with technological equivalents.

Identity Protection Policy

The Act requires each local government agency to draft and approve an identity protection policy by June 1, 2011.⁵ The Act sets forth five requirements that the protection policy must meet.

First, the policy must reference the Identity Protection Act. Second, the policy must require that all employees with access to social security numbers in the course of their job duties be trained to protect the confidentiality of the numbers. The training should include instructions on the proper handling of information that contains social security numbers from the time of collection through the destruction of the information.

Third, the policy must direct that only employees who are required to use or handle information or documents that contain social security numbers have access to such information or documents. Fourth, the policy must require that social security numbers requested from an individual be provided in a manner that makes the number easily redacted if required to be released as part of a public records request.

¹ 5 Illinois Compiled Statutes ("ILCS") 179/1 et seq.

² See 5 ILCS 179/10.

³ 5 ILCS 179/15.

⁴ 5 ILCS 179/30.

⁵ 5 ILCS 179/35.

Finally, the policy must require that, when collecting a social security number or upon request by the individual, a statement of the purpose(s) for which the agency is collecting and using the social security number be provided.

Once a privacy policy is approved, local government agencies must file a written copy of the policy with the governing board of the unit of local government. Each agency must also advise its employees of the existence of the policy, and make copies of it available to each employee. Agencies must implement each of the above components of their identity protection policy within twelve months after it is approved.

For municipalities, this policy is required in addition to the Red Flag Identity Theft Policy which must also be adopted.

Penalty Provisions

Any person who intentionally violates the provisions of the Act is guilty of a Class B misdemeanor.⁶

⁶ 5 ILCS 179/45.

Summary

The Identity Protection Act seeks to protect the identity of individuals by prohibiting state and local government agencies from using social security numbers in a variety of ways. The Act also requires agencies to draft and approve an identity-protection policy by no later than June 1, 2011. Agencies should be mindful of the Act's provisions and requirements when working with social security numbers.

RSNLT is preparing a model Identity Protection Act policy for its clients. Please contact your RSNLT attorney if you are interested in this policy for your institution.

© 2010 Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

This newsletter is published periodically by Robbins Schwartz Nicholas Lifton & Taylor, Ltd. Although the information contained in this publication is considered accurate, it is not, nor should it be construed to be, legal advice. If you have a problem or experience an incident that involves a topic addressed in this publication, please seek a legal opinion that is based upon the facts in your specific case. Questions and comments about this publication and address changes should be directed to the Publications Editor.

Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

55 West Monroe Street | Suite 800 | Chicago, Illinois 60603 | 312-332-7760 | questions@rsnlt.com.