

ANALYSIS OF HB 2061 - Texas Privacy Issue

March 20, 2007

HB 2061, was passed by the Texas Senate and the House and is awaiting the Governor's signature. It creates protection from prosecution for a selected group of officials while removing protection for citizens' Social Security Numbers (SSN's) as confidential information. It removes any recourse for citizens in the event that an official in the protected class releases SSN's in a document entrusted to that official. Basically, HB 2061 creates special treatment of sensitive personal information, initially Social Security Numbers, and says County Clerks cannot be prosecuted or sued by citizens for releasing SSN's if the SSN is in a document residing in the clerk's records repository.

HB 2061 establishes precedent and an umbrella statute that could be used by the legislature to remove protection of any sensitive information such as gun permits, background, medical etc., by simply redefining the information as not confidential and sets a precedent that certain classes of people can be protected, in this case, only County Clerks and not County Commissioners, Sheriff's, etc. It removes protection for privacy that has been established for years by both State and Federal statutes for SSN's.

The precedent set by this bill is very disturbing and most citizens are unaware of the potential consequences. The Texas legislature has taken an approach to solving a problem created by Texas County Clerks who have routinely posted SSN's and other confidential information online and sold the information in their care in a bulk format to list brokers, title companies and others who have used the information to create valuable commercial databases in spite of State and Federal regulations that classified SSN's and other information as confidential and protected. Often the data that is sold is sent offshore to other countries for processing and, in some cases, contains more than SSN's.

Several Texas County Clerks shut down their offices when Attorney General Abbott gave his opinion GA-0519 upholding a State statute that went into effect in 2005 declaring SSN's to be protected and exempt from the Public Information Act. The AG's opinion said that County Clerks who released SSN's could be subject to prosecution. The clerks' actions in closing their offices created panic with many title companies and oil exploration land groups who do property searches as part of their businesses. Many of these groups routinely buy information in bulk form from clerks who have imaged and stored records or posted it online for easy access without redacting personal information such as SSN's.

This orchestrated crises pushed the legislature into an action that placed business interests and political cover above protection of citizen's rights. This is very dangerous for the citizens of Texas. Today this bill relates to SSN's, which immigration and law enforcement entities dealing with identity theft maintain is a major path for criminals and illegal's to use in creating fraudulent documentation to make it easier to blend into communities and obtain jobs.

The officials who give out information have technology that has allowed them to accumulate, post on the internet and sell data in bulk for commercial interests and they also have technology available to redact and protect the information but, have not complied with the regulations that have been in effect for years. Now they are trying to address the issue by simply having the legislature declare protected information as not protected and having themselves set above the citizens rights to fair treatment.

Tomorrow, the precedent the bill sets might be used to remove protection for other classes of protected information if it is deemed to difficult for the County Clerks to manage the issues of privacy. For example, if a child had a reaction to a vaccination that was recorded as part of a public health scenario and files were placed in a County Clerk's office, the information might become public with no protection if the clerks said it was too hard to manage medical privacy issues. Or, the identity of everyone who holds a gun permit might be made public so other citizens could be aware of those with guns. The structure and precedent of HB 2061 could allow the release of those types of information by simply redefining the information, removing citizens' recourse and rolling it under HB 2061.

Furthermore, even if a citizen has the right to withhold information, HB 2061 says that the citizen must know where the information is located and request it by specific document. The likelihood of a citizen having the resources to determine where information might be located, possibly in multiple counties and files, and to formally request in writing by specific document is essentially impossible. This bill also may conflict with Federal statutes like the Social Security Act and other privacy statutes.

AN ACT

relating to the acquisition or disclosure of the social security number of a living person by a governmental body, including by a district or county clerk.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.147, Government Code, is amended to read as follows:

Sec. 552.147. ~~[EXCEPTION:] SOCIAL SECURITY NUMBERS [NUMBER OF LIVING PERSON].~~

(a) The social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.

(b) A governmental body may redact the social security number of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(c) Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state, including any claim for damages in a lawsuit or the criminal penalty imposed by Section 552.352.

(d) Unless another law requires a social security number to be maintained in a government document, on written request from an individual or the individual's representative the clerk shall redact within a reasonable amount of time all but the last four digits of the individual's social security number from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk. The individual or the individual's representative must identify, using a form provided by the clerk, the specific document or documents from which the partial social security number shall be redacted.

SECTION 2. Section 11.008, Property Code, is amended to read as follows:

Sec. 11.008. PERSONAL ~~[CONFIDENTIAL]~~ INFORMATION IN REAL PROPERTY RECORDS. (a)

In this section, "instrument" means a deed or deed of trust.

(b) An instrument submitted for recording is not required to contain an individual's social security number, and the social security number of an individual is not obtained or maintained by the clerk under this section. The preparer of a document may not include an individual's social security number in a document that is presented for recording in the office of the county clerk.

(c) Notwithstanding Section 191.007(c), Local Government Code, an instrument transferring an interest in real property to or from an individual ~~[and disclosing that individual's social security number or driver's license number]~~ must include a notice

that appears on the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY [~~THIS~~] INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

(d) [~~(e)~~] The validity of an instrument as between the parties to the instrument and the notice provided by the instrument are not affected by a party's failure to include the notice required under Subsection (c) [~~(b)~~].

(e) [~~(d)~~] The county clerk may not under any circumstance reject an instrument presented for recording solely because the instrument fails to comply with this section. Other than the duty to redact an individual's social security number as required by Section 552.147, Government Code, the county clerk has no duty to ensure that an instrument presented for recording does not contain an individual's social security number.

(f) [~~(e)~~] The county clerk shall post a notice in the county clerk's office stating that instruments recorded in the real property or official public records or the equivalent of the real property or official public records of the county:

(1) are not required to contain a social security number or driver's license number; and

(2) are public records available for review by the public.

(g) [~~(f)~~] All instruments described by this section are subject to inspection by the public. The county clerk is not criminally or civilly liable for disclosing an instrument or information in an instrument in compliance with the public information law (Chapter 552, Government Code) or another law.

(h) [~~(g)~~] Unless this section is cited in a law enacted after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in the real property or official public records or the equivalent of the real property or official public records of a county.

(i) [~~(h)~~] To the extent that federal law conflicts with this section, an instrument must contain the information required by and must be filed in a manner that complies with federal law.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.