



SOCIAL SECURITY

The Commissioner

June 27, 2005

The Honorable Carolyn B. Maloney
House of Representatives
Washington, D.C. 20515

Dear Ms. Maloney:

This is in reply to your letter dated May 27, 2005, in which you raise important issues about the Social Security Administration's (SSA) use of its *ad hoc* authority to disclose information to law enforcement officials following the terrorist attacks of September 11, 2001 (9/11 terrorist attacks). You asked if our recent use of the *ad hoc* authority significantly altered SSA's long-standing policy regarding the disclosure of personal information, that SSA maintains on individuals, to law enforcement officials.

SSA is committed to protecting the privacy of the information that we maintain on individuals. We release information only when such disclosure is consistent with the Privacy Act and other statutes that govern the disclosure of information. SSA's *ad hoc* authority to disclose information is in our regulations at CFR 401.195. This authority has been available to SSA for over 40 years and its use does not signal a change in SSA's policy.

Under the law enforcement disclosure exception in the Privacy Act, Federal agencies may disclose personal information to law enforcement agencies in the United States for both civil and criminal law enforcement activities under certain circumstances. As you noted in your letter, SSA's disclosure regulations allow disclosure for law enforcement purposes only when a serious crime has been committed and an individual has been indicted or convicted, or when an individual commits a crime involving the Social Security program or a program with a similar purpose.

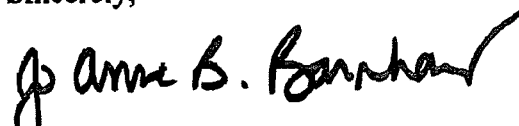
However, SSA's regulations also provide authority for the Commissioner, or his or her designee, to disclose information if no other Social Security Act provision allows for release, and the release is not prohibited by Federal law. SSA uses this authority only in the most egregious situations in which disclosure of information would serve the greater public good. Examples of the use of this disclosure authority include the 9/11 terrorist attacks and the case of the Washington D.C. area sniper.

Page 2 – The Honorable Carolyn B. Maloney

In your letter, you refer to documents obtained by the Electronic Privacy Information Center (EPIC) in response to their Freedom of Information (FOIA) request. EPIC has characterized these documents as reflecting the adoption by SSA of a broad *ad hoc* policy for disclosing personal information to law enforcement officials investigating 9/11. On the contrary, the documents we provided to EPIC demonstrate how SSA invoked its long-standing *ad hoc* authority and includes procedures that we sent to Social Security offices that were expected to receive requests from law enforcement agencies involved in the investigations of the 9/11 terrorist attacks. The documents provided do not reflect a change in any SSA policy. Please note that we have provided answers to the seven specific questions that you raised regarding the documents released in response to the EPIC FOIA request in the enclosed document.

Thank you for raising this issue regarding national security concerns and privacy rights. I believe that we, at SSA, appropriately balance these interests when deciding whether or not to release information to law enforcement officials. If I may be of further assistance, please do not hesitate to contact me or have your staff contact Mr. Robert M. Wilson, Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,



J Anne B. Barnhart

Enclosure

Enclosure – The Honorable Carolyn B. Maloney

Social Security Administration (SSA)
Questions Regarding Documents Released In Response to the EPIC FOIA
Request

The questions and answers regarding the EPIC FOIA request are as follows:

- 1. What were the specific policy changes on the release of sensitive individual information adopted by SSA after the 9/11 attacks?**

We did not make any changes to SSA's disclosure policy after the terrorist attacks of September 11, 2001 (9/11 terrorist attacks). SSA's *ad hoc* disclosure authority has been in effect for about 40 years and is part of SSA's disclosure regulations.

- 2. Please explain under what circumstances SSA can use its "ad hoc" authority?**

The Commissioner or his/her designee may use SSA's *ad hoc* authority to disclose information when our disclosure regulations will not allow disclosure, but Federal law (i.e., Privacy Act) permits the disclosure.

- 3. Were you asked to make these changes by law enforcement agencies or employees, or were these changes made in anticipation of requests for sensitive individual information?**

As mentioned in our response to question #1, SSA did not make any changes to its disclosure policy after the 9/11 terrorist attacks. In the immediate aftermath of the terrorists' attacks, law enforcement officials indicated that they would be contacting SSA in their ensuing investigations. We recognized that our law enforcement disclosure exception could not be used because, although a serious crime had been committed, no indictment or conviction had been obtained. SSA looked to its *ad hoc* disclosure authority and concluded that the Privacy Act law enforcement exception would allow disclosure under these circumstances.

- 4. How does the new "ad-hoc" policy comply with the Privacy Act?**

SSA's *ad hoc* authority is not a new policy and it is in complete compliance with the Privacy Act. We only invoke the *ad hoc* authority in limited situations when SSA's regulations do not permit disclosure, but disclosure would be allowed under the Privacy Act.

Enclosure – Page 2 – The Honorable Carolyn B. Maloney

5. Was Congress ever informed of your changes to SSA policy? What is the procedure to inform Congress of changes?

Please refer to the response to question #1. SSA's *ad hoc* authority is not new and predates the disclosures following the 9/11 terrorist attacks. Any changes to SSA's disclosure policy would have to be promulgated in regulations and published in the Federal Register for review by the general public.

6. How many requests for records have been made to SSA since 9/11 under this ad-hoc authority?

Generally, SSA does not receive requests invoking the *ad hoc* authority. Rather, SSA determines if its *ad hoc* authority is applicable to a particular disclosure situation when disclosure is prohibited by SSA's disclosure regulations, but is permitted by the Privacy Act. Since September 11, 2001, SSA has invoked its *ad hoc* disclosure authority in only one other instance, which was the Washington, D.C. area sniper case.

7. Has SSA provided information to law enforcement agencies for activity not related to 9/11 under this new policy?

As mentioned in our response to question #1, we did not make any changes to SSA's disclosure policy after the terrorist attacks of September 11, 2001. SSA adheres to its long-standing disclosure policies and the Privacy Act. SSA does not have a new disclosure policy. Over the past 25 years, SSA has invoked its *ad hoc* disclosure authority and disclosed information to law enforcement agencies a number of times. These included disclosures related to threats on the life of the President, presidential candidates and the 1993 World Trade Center bombing. All of the disclosures made under the *ad hoc* authority were permissible under the Privacy Act exceptions.