IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES CAMP, Plaintiff, v. BETTY B. CASON in her official capacity as Probate Judge for Carroll County, Georgia and BILL HITCHENS in his official capacity as the Commissioner of the Georgia Department of Public Safety, Defendants.	)	CIVIL ACTION FILE NO. 1:06-CV-1586-CAP

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

Plaintiff, James Camp, files this Memorandum of Law in Support of His Motion for Summary Judgment.

Summary

Plaintiff has brought this action against Defendants for violations of the federal Privacy Act, Georgia firearm licensing law, the United States Constitution, and the Georgia Constitution. Defendants violated the statutory and constitutional authorities cited by requiring Plaintiff to disclose his Social Security Account Number ("SSN") and his employment information in order to obtain a Georgia firearms license ("GFL"). Defendants failed to provide the warning

required by the Privacy Act and refused to allow Plaintiff to apply for a GFL when he refused to disclose his SSN pursuant to the federal Privacy Act. Plaintiff seeks declaratory and injunctive relief for past and future violations, and attorneys fees and costs.

Background

On June 14, 2006, Plaintiff applied for a renewal GFL at the Probate Court for Carroll County, Georgia. First Affidavit of James Camp, ¶ 3. At the time of his application, Plaintiff's then-current GFL was expiring in less than a week, on June 20, 2006. First Camp Aff., ¶ 6. Defendant Cason, who is the probate judge in Carroll County, required Plaintiff to apply for a renewal GFL using an application form created by the Georgia Department of Public Safety. Letter from Defendant Cason to Counsel for Plaintiff dated June 27, 2006, contained as Exhibit B to Complaint [Doc. 1]. The form required Plaintiff to provide his SSN and information pertaining to his employment. Second Affidavit of James Camp, ¶ 3. The application form did not contain a Privacy Act Warning. Id. at 4.

The probate court required Plaintiff to apply by answering questions verbally as the clerk asked him each question from the application form and entered his responses into a computer

terminal. Id. at 5. During this process, the clerk at the Carroll County Probate Court orally asked Plaintiff for his SSN. Id. at 6. Plaintiff refused to disclose his SSN, and the clerk told him his application would not be processed unless James Camp agreed to disclose his SSN. Id. at 8. Plaintiff informed the clerk that requiring his SSN in order to process the application was a violation of the federal Privacy Act. Id. at 9. The clerk told Plaintiff he would have to discuss that with Defendant Cason, but also informed Plaintiff that Defendant Cason was out of the office for the week and would not be back until June 19, 2006, the following Monday. Id. at 10. Plaintiff's firearms license was going to expire on June 20, 2006. First Camp Aff., ¶ 6. The clerk refused to proceed any further with taking information from Plaintiff for his application without his SSN, so Plaintiff left the Probate Court office. Second Camp Aff., ¶ 11.

On June 19, 2006, Plaintiff's counsel wrote Defendant Cason and Defendant Hitchens, advising them of their violations of the Privacy Act and Georgia law by requiring Plaintiff to disclose his SSN and employment information. [Doc. 1, Ex. A]. Plaintiff's counsel requested that Defendants process Plaintiff's renewal GFL application without his SSN, and that

they respond by June 26 because of the impending expiration of Plaintiff's GFL. Because O.C.G.A. § 16-11-129(i) allows a GFL holder to obtain a temporary renewal GFL if he applies for a renewal within 30 days after the expiration of the GFL, Plaintiff was facing a hard deadline by which to get the matter resolved. Neither Defendant responded within the one week timeframe. Defendant Cason responded on June 27, 2006, deferring to whatever decision the Georgia Department of Public Safety ("DPS") might make, but not agreeing to process Plaintiff's renewal GFL application without his SSN. [Doc. 1, Ex. B]

Defendant Hitchens is the Commissioner of the Department of Public Safety, and his counsel, Lee O'Brien, called Plaintiff's counsel to acknowledge the letter but gave no answer as to whether Defendant Hitchens would act on Plaintiff's request.

Neither Defendant took action or contacted Plaintiff's counsel within the time requested. While both Defendants ultimately contacted Plaintiff's counsel, by the Independence Day holiday neither Defendant had agreed to Plaintiff's request that they voluntarily abide by federal and state law.

On July 5, 2006, two weeks after Plaintiff's GFL expired and a mere two weeks before Plaintiff's thirty day window

allowed by law to apply for a renewal GFL would expire, Plaintiff commenced this action for violations of the federal Privacy Act and the state statute prescribing the issuance of GFLs. In addition to permanent relief, Plaintiff sought, and this Court granted, a restraining order requiring Defendant Cason to accept and process Plaintiff's renewal GFL application without Plaintiff's SSN. [Doc. 13]. On July 12, 2006, Plaintiff applied, pursuant to the Court's order, for a renewal GFL and temporary renewal GFL. Second Camp Aff., ¶ 12. The clerk did not request, nor did Plaintiff disclose, his SSN or his employment information. Id.

Plaintiff now moves for summary judgment on all issues in his Complaint, because there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law.

Jurisdiction

This Court has jurisdiction over the case because the primary cause of action is a federal question, violations of the federal Privacy Act. 28 U.S.C. § 1331. Plaintiffs may sue under 42 U.S.C. § 1983 for violations of the Privacy Act. Schwier v. Cox, 340 F.3d 1284, 1292 (11th Cir. 2003). The Court has jurisdiction over the related state claims because they arise

under a common nucleus of facts with the federal question. 28 U.S.C. § 1367.

Argument

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56, Fed. Rules Civ. Proc. In the present case, there are no disputed issues of material fact, as Plaintiff and Defendants agree on what occurred. The issues raised by Defendants relate only to matters of law.

I. Violation of Section 7(a)(1) of the Privacy Act

Defendants violated Section 7(a)(1) of the Privacy Act by requiring Defendant to disclose his SSN in order to obtain a GFL. Section 7(a)(1) of the Privacy Act provides, "It shall be unlawful for any federal, state, or local government agency to deny any individual a right, benefit, or privilege provided by law because of such individual's refusal to disclose its Social Security Number." Pub. L. 93-579, 88 Stat. 1896, 5 U.S.C. § 552a(note).

It is undisputed that Plaintiff refused to disclose his SSN when he applied for a renewal GFL. First Camp Aff., ¶ 4. As a result of such refusal, Defendant Cason denied Plaintiff the right, benefit, or privilege of applying for and receiving a

renewal GFL. Id. at 5. Pursuant to O.C.G.A. § 16-11-129, Defendant Hitchens created the application form that Defendant Cason used when Plaintiff applied. Letter from Defendant Cason to Counsel for Plaintiff dated June 27, 2006, contained as Exhibit B to Complaint [Doc. 1]. The form unequivocally required Plaintiff to disclose his SSN to obtain a right, benefit, or privilege. Each Defendant-government official had a hand in the denial of a right, benefit, or privilege to Plaintiff.

There can be no question that a GFL is a right, benefit or privilege. Holders of GFLs are exempt from various state and federal criminal provisions, including prohibitions against carrying a firearm openly outside one's home, automobile, or place of business (O.C.G.A. § 16-11-128); prohibitions against carrying a firearm concealed outside of one's home, automobile, or place of business (O.C.G.A. § 16-11-126); prohibitions against carrying a firearm in any public place that is not a public gathering (O.C.G.A. § 16-11-127(b)); certain prohibitions related to carrying a weapon in a school safety zone (O.C.G.A. §16-11-127.1(c)(7)); and the federal Gun Free School Zones Act (18 U.S.C. § 922(q)(2)(B)(ii)).

II. Violation of Section 7(b) of the Privacy Act

Defendants also violated Section 7(b) of the Privacy Act by failing to inform Plaintiff:

1. Whether disclosure of his SSN was mandatory or optional;

2. By what statutory or other authority Plaintiff's SSN was solicited; and

3. What uses will be made of Plaintiff's SSN.

These three notices are required by federal law. They are not optional even if the government is requesting the SSN on a voluntary basis. Schwier v. Cox, 412 F.Supp. 2d 1266, 1275 (N.D. Ga. 2005). Even considering the revised application form Defendant Hitchens filed, the violations are *not* cured. Defendant Hitchens "optional" notation on the filed document, at best, might satisfy only the first of these three federal statutory requirements.

Section 7(b) of the Privacy Act requires that "Any federal, state, or local government agency which requests an individual to disclose his Social Security Account Number shall inform the individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and which uses will be made of it." The application form created by

Defendant Hitchens and used by Defendant Cason did not inform Plaintiff of any of the required information. Second Camp Aff., ¶ 4. In addition, Plaintiff was not warned orally by Defendant Cason or her staff when Plaintiff applied for a GFL. Id. As noted above, the Section 7(b) disclosure is mandatory, even when the SSN is requested on a voluntary or "optional" basis. Schwier, 412 F. Supp. 2d at 1275.

Defendants violated both Section 7(a) and Section 7(b) of the Privacy Act. During the pendency of this action, Defendant Hitchens claimed to have taken measures to eliminate future violations of Section 7(a) [Doc. 14]. Defendant Hitchens did not, however, file any competent evidence, such as an affidavit or declaration, that he took such measures. Moreover, Plaintiff has presented the court with competent evidence that the measures, if taken, were ineffective and not implemented [Doc. 26-28, 30-32]. Finally, neither Defendant asserts that he or she has taken any actions to address violations, past or future, of Section 7(b) of the Privacy Act. On the contrary, Defendant Hitchens has argued vociferously that he is not required to make the GFL application form "exactly like a similar federal form." [Doc. 24, p. 3]. Defendant Hitchens's strawman argument is sufficiently rebutted by pointing to the text of section 7(b) of

the Privacy Act, the requirements of which are clear and mandatory even when the SSN disclosure request is termed "optional."

III. Violations of State Law

Defendant Hitchens is required by O.C.G.A. § 16-11-129(a) to "furnish application forms" at no cost that "shall be designed to elicit information from the [GFL] applicant pertinent to his or her eligibility under this code section but shall not require data which is non-pertinent or irrelevant . . ." Id. (emphasis added). Title 16 of the O.C.G.A., including O.C.G.A. § 16-11-129(a), is the Criminal Code of Georgia. Criminal statutes must be construed strictly against the government and in favor of Plaintiff James Camp. Busch v. State, 271 Ga. 591, 592, 523 S.E.2d 21 (1999).

The criteria for eligibility are contained in O.C.G.A. § 16-11-129(b)(1)-(6) and relate to people that: 1) are prohibited by federal law from possessing a firearm; 1.1) are under 21 years of age; 2) are fugitives from justice or against whom certain criminal proceedings are ongoing; 3) have been convicted of certain crimes; 4) have been hospitalized for certain problems; 5) have certain drug-related histories; or 6) are not lawfully present in the United States.

Not one of the criteria listed in subsection 129(b) has any relationship to a GFL applicant's employment. Defendant Hitchens apparently concedes that employment information is not pertinent. [Doc. 14 and 24]. "The Department modified the form . . . Further, so as not to run afoul of state law provisions, the form no longer "requires" employment information." [Doc. 24, p. 3]. Defendant Cason contends, however, that employment information bears on an applicant's "good moral character." See Preliminary Report and Discovery Schedule [Doc. 23], ¶ 1(c) ("Defendant Cason contends that employment information is pertinent information and also helpful, in some cases, to determine whether the applicant is of good moral character."). Whether information is "pertinent," however, relates to eligibility, and the eligibility requirements are listed in subsection (b).

Defendant Cason has not elaborated on her theory that employment information bears on a GFL applicant's moral character. She does not explain whether she believes that unemployed people are immoral, people working for certain employers are immoral, or people not employed for a particular length of time are immoral. The application form (even the "revised" form included by Defendant Hitchens in Doc. 14) asks

for the applicant's work telephone number, the name of the applicant's employer, the employer's address, and how long the applicant has been employed by his present employer.

"Good moral character" is not listed in the GFL eligibility requirements of O.C.G.A. § 16-11-129(a). It is mentioned, however, in the section of the statute pertaining to the actual issuance of the license. O.C.G.A. § 16-11-129(d)(4). There is no discussion in the text of the statute of what constitutes "good moral character," nor is there any case law discussing good moral character within the context of a GFL application. There is, however, case law on what constitutes good moral character for applicants for other types of licenses, and the general principle is that the "good moral character" requirement must relate to the purposes for which the license is issued.

Good moral character appears in many licensing statutes within the state of Georgia, from psychiatrists, see O.C.G.A. § 43-34-27, and bail bondsmen, see O.C.G.A. § 17-6-50(b)(3), to cosmetologists. See O.C.G.A. § 43-10-9(a). If, as Defendant Cason contends, this phrase was a wide open invitation granting unlimited discretion to deny a license to anyone who, in Defendant Cason's eyes, lacked appropriate employment, then unemployed persons would not be able to obtain professional

licenses to perform any of the work for which Georgia law requires the applicant to have "good moral character." The law does not require such an absurd result.

Generally, the requirement of "good moral character" relates to convictions for felonies or crimes involving moral turpitude, or to the commission of the same bad acts for which there was no conviction. See e.g., Pryor Org. v. Stewart, 274 Ga. 487, 490, 554 S.E.2d 132 (2001) (holding that sheriff was authorized to conclude that professional surety applicant who acted as a "vigilante," but was not convicted, lacked good moral character and "that his conduct in that regard reflect[ed] adversely upon his qualification to serve"). In Kirk & Associates, Inc. v. McClellan, 214 Ga. App. 685, 687, 448 S.E.2d 764 (1994), the Court of Appeals noted that the detective licensing law requires that an applicant be of "good moral character" and noted that the purpose of the act was to protect the public "from unscrupulous or criminally dangerous or unqualified persons. Its purpose, though broad, is not to assure that those working in the profession are qualified to drive, or to prevent negligence in the operation of motor vehicles. These public interests are served by other regulatory mechanisms and laws." Id. Even considering the strict

requirements for admission to the bar (which includes a requirement of good moral character), any requirements "must have a rational connection with the applicant's fitness or capacity to practice law." Schware v. Board of Bar Examiners, 353 U.S. 232, 238-9, 77 S.Ct. 752, 755-6, 1 L.Ed.2d 796 (1956).

Even strip clubs may have a "good moral character" requirement imposed upon them as a qualification for obtaining a license. Club Southern Burlesque, Inc. v. City of Carrollton, 265 Ga. 528, 457 S.E.2d 816 (1995). While the majority of probate judges in the State of Georgia might declare such businesses immoral in themselves (a topic this brief will not address), the "good moral character" requirement must relate only to the reasons for which the license was issued. "We see no problem in the revocation of the license for the unlawful acts or omissions of the licensee (including persons with an ownership interest in a licensee), or for the acts or omissions of those acting for the licensee in the scope of their employment, when the acts involved are related in any way to the business for which the license was issued." Pel Asso, Inc. v. Joseph, 262 Ga. 904, 910, 427 S.E.2d 264 (1993) (rev'd on other grounds).

There is no support in the case law for the proposition that one's employment situation can serve to disqualify him for a GFL based on a lack of good moral character.

Bail bondsmen must be of good moral character to obtain a license to write bail bonds. See O.C.G.A. § 17-6-50(b)(3). The Supreme Court of Georgia has interpreted the requirement of good moral character to mean "a pattern of behavior conforming to a profession's ethical standards and showing an absence of moral turpitude. . . .The applicable profession is that of bail bondsperson." Pryor Organization, Inc. v. Stewart, 274 Ga. 487, 490, 554 S.E.2d 132, 135 (2001). In the context of the purpose for which the license was issued, the phrase "good moral character," was sufficiently definite to apprise the surety that he could not break the law by impersonating a police officer, even if he was not criminally prosecuted for his act. Pryor Organization, Inc. v. Stewart, 274 Ga. 487, 554 S.E.2d 132 (2001).

In sum, the phrase "good moral character" must be construed as applying to the eligibility factors listed in O.C.G.A. § 16-11-129(b), as well as a probate judge's actual knowledge of evidence of an applicant having committed such acts in the absence of a record of an actual conviction. Further, because

this phrase occurs in the criminal code, Title 16, and not in a professional licensing code or regulation, the phrase must be strictly construed against the government and in favor of Plaintiff James Camp. In addition, the requirement of good moral character, as it relates to asking for employment information, must be viewed in the light of the narrow requirement of the statute that the application form "be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant . . ." O.C.G.A. § 16-11-129(a) (emphasis added). Viewed in this light, an applicant's employment or lack thereof cannot possibly relate to the applicant's "good moral character" as pertains to his eligibility under Code subsection 129(b). Things which do not bear any relationship to one another are by definition "irrelevant."

As noted above, Defendant Hitchens apparently intends to make providing employment information optional with the applicant. He has typewritten on the application form that he filed with Doc. 14 that employment information "will be helpful for contacting applicants." (emphasis added). It is difficult to take Defendant Hitchens' basis for requesting employment

information seriously. The form already requests an applicant's address and telephone number. Notably, it does not request email address, cellular phone number, pager number, text message address, or instant messenger address. Despite the many varied means of communication available today, Defendant Hitchens has selected an applicant's length of employment as something that would be helpful for contacting the applicant.

The reason Defendant Hitchens arrived at this absurd result is that he took the old form (the one Plaintiff was required to use on June 14, 2006), and, in a feeble attempt to deprive the Court of jurisdiction by rendering the case moot, he simply typed the "helpful for contacting applicant" notation on it. If he were genuinely interested in complying with legal requirements (and not just making this litigation go away), Defendant Hitchens would eliminate employment information and just ask applicants for alternate means of contact (if he really believed it necessary).

In any event, Defendant Cason has asserted her desire to continue requesting this non-pertinent and irrelevant information in a quest to determine each applicant's "good moral character." Such a request is not allowed by the plain wording of the statute, and the request should be excised from the form.

IV. Violations of the United States Constitution

Defendants have violated Plaintiff's right to keep and bear arms, as guaranteed by the Second and Fourteenth Amendments to the United States Constitution.

The Second Amendment provides, "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." While entire treatises have been written on the meaning and interpretation of this simple sentence, it is not necessary to go into a lengthy discussion here. Counsel of record for Defendant Hitchens, Thurbert Baker, Attorney General of Georgia, has filed an amici curiae brief within the last two months, explaining exactly what it means. In Parker v. District of Columbia, No. 04-7041 (D.C. Cir.), Attorney General Baker filed the Brief of the States of Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Utah, and Wyoming as Amici Curiae in Support of Appellants (the "States' Amici Brief") on June 16, 2006. For the Court's convenience, a copy of the States' Amici Brief is attached hereto as Exhibit A.

In the States' Amici Brief, Attorney General Baker affirms that the "primary meaning of 'bear' is 'to carry.'" States'

Amici Brief, p. 13. He goes on to say that the Second Amendment "affords an individual right to 'the people' to 'wear, bear, or carry' arms…." States' Amici Brief, p. 14. And, Attorney General Baker concludes that the Second Amendment right to carry arms is subject only to "any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms…." States' Amici Brief, p. 28. The States' Amici Brief was filed for the stated purpose of protecting the right of Georgia's citizens to travel "while carrying properly-licensed weapons" not only in Georgia, but elsewhere in the nation, including the District of Columbia, without fear of "unconstitutional arrest and prosecution." States' Amici Brief, Statement of Interest of Amici Curiae, p. 2.

In the present case, Defendants, including Attorney General Baker's client, have violated Plaintiff's Second Amendment rights. The State of Georgia has criminalized the carrying of arms without a license, and Defendant Hitchens has created (and Defendant Cason has applied) a licensing scheme whereby Plaintiff was required, in violation of federal law, to disclose his SSN in order to obtain a license to carry. In addition, the

warning required by the Privacy Act is not included in the licensing provisions. That same licensing scheme violates Georgia law by requiring Plaintiff to disclose his employment information, which is irrelevant to determining Plaintiff's eligibility under the statute.

A licensing scheme that violates state and federal law cannot be construed as a "limited, narrowly tailored…exception[] or restriction[]…that [is] reasonable."

V. Violations of Georgia Constitution

Defendants also violated the Georgia Constitution, which states, "**The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne.**" Georgia Constitution, Article I, Section I, ¶ VIII. Presumably, General Baker would agree that "bear" in the Georgia Constitution also means "to carry" as it does in the United States Constitution. Much of the foregoing discussion, therefore, on the Second Amendment to the U.S. Constitution applies here. The Georgia Constitution has an additional phrase, however, in that it empowers the General Assembly to regulate the ***manner*** in which arms are borne (i.e., carried). Significantly, the General Assembly is not empowered to ban the carrying of arms. The main

method by which the State of Georgia has prescribed the manner in which arms may be borne is to regulate concealed carry, historically by banning it (allowing only open carry), and then by licensing it. Today, the General Assembly has prescribed the manner in which such arms may be borne by requiring a GFL to carry a firearm concealed or openly when outside of one's home, automobile, or place of business. See O.C.G.A. §§ 16-11-126 and 128.

The Georgia Supreme Court has held that the state may require a license to carry (i.e., a GFL) without violating this state constitutional provision. Strickland v. State, 137 Ga. 1, 72 S.E. 260, 264 (1911). But, that power must be construed reasonably, so as not to "conflict with the Constitution." Id. at 265. A licensing scheme that violates both federal and state law, such as the present system, cannot be held to be reasonable and constitutional.

VI. Relief Requested

Plaintiff has requested the following substantive relief:

1. A declaration that the GFL application form violates the Privacy Act.

2. A permanent injunction prohibiting Defendants from requiring disclosure of the SSN to obtain a GFL or renewal GFL.

3. A permanent injunction requiring Defendants to set forth the warning in Section 7(b) of the Privacy Act, if they request GFL applicants to provide SSNs on an optional basis.

4. An injunction requiring Defendants to expunge Plaintiff's SSN from their system and records.

5. A declaration that Defendants' form and actions violated the Privacy Act, the 14th Amendment to the United States Constitution (applying the 2nd Amendment), and Article I, Section I, ¶ VIII of the Georgia Constitution.

6. An order requiring Defendants to process Plaintiff's GFL application without requiring his SSN.

7. A declaration that employment information is neither pertinent nor relevant to eligibility for a GFL.

8. An order prohibiting Defendants from requiring employment information as a precondition of obtaining a GFL.

9. An order requiring Defendants to expunge Plaintiff's employment information from their records and systems.

10. Attorneys fees and costs.

Item Number 6 already has been granted by the Court [Doc. 13]. Plaintiff will address the remaining items in order.

Item 1 – At the time this action was commenced, there was but one application form at issue, the one Defendant Hitchens created and Defendant Cason required Plaintiff to use on June 14, 2006. The form required Plaintiff to disclose his SSN, in violation of Section 7(a) of the Privacy Act. It also did not contain the warning notices required by Section 7(b) of the Privacy Act. Since then, Defendant Hitchens has filed a revised form with the court [Doc. 14]. There is no indication, however, that this is the new, official form. Rather, it is the same form on which Plaintiff applied on June 14, with two notations typed onto it in very small font. Even the date of revision and issuance in the lower left hand corner is the same as the old form. Even assuming, however, that the form was changed so as

to make the SSN disclosure optional, the form still blatantly violates § 7(b) of the Privacy Act, a federal statutory requirement that Defendant Hitchens has openly mocked as requiring him to copy a federal form. [Doc. 24, p. 3] *Both the old and the "new" form violate the Privacy Act*.

Item 2 – It is clear Defendants violated the Privacy Act by requiring SSNs for GFL applicants. It also is clear that these violations have been occurring for a period of years. Second Camp Aff., ¶ 13. Defendant Hitchens has alleged that he will cease such violations going forward, but he has not provided the Court with any indication of official action he has taken. He does not have a history of compliance upon which the Court can rely. See Jews for Jesus, Inc. v. Hillsborough County Aviation Authority, 162 F.3d 627, 629 (11th Cir. 1998) (3 year history of compliance). Rather, he has a history of violations.

The only way to ensure compliance going forward is for the Court to enjoin future violations.

Item 3 – Neither Defendant has claimed that he or she has taken any action to comply with Section 7(b) of the Privacy Act. Plaintiff has proven in this case that Defendants have violated this Section, and Defendants' most recent briefs argue that they intend to continue to do so. Future violations must be

enjoined. Defendants could comply with an appropriate injunction simply by dropping the request for the SSN altogether or by including the warning required by the Privacy Act, if the Defendants could locate a statutory or regulatory authority for soliciting the SSN disclosure.

Item 4 – Defendant Cason indicated at the time of service of the Summons and Complaint that she did not need Plaintiff's SSN because she could obtain it from his previous GFL application. Second Camp Aff., ¶ 15. Even though the Court ordered Defendant Cason to accept his renewal GFL application without an SSN, she apparently still has his SSN in her records or systems. Because Plaintiff's SSN should not have been required for his initial GFL, Defendant Cason should be ordered to remove it from her records and systems.

Item 5 – As shown above, Defendants violated the Privacy Act by refusing to allow Plaintiff to apply for a GFL on June 14, 2006 when he refused to disclose his SSN. A violation of federal law is rarely much clearer than this set of facts, in which the Defendants' actions were exactly what is proscribed in the plain text of the statute. Regardless of any actions Defendants took after June 14, or that they may take in the future, it is undeniable that Defendants violated the Privacy

Act on June 14, 2006, by denying a right, benefit, or privilege provided by law because of Plaintiff James Camp's refusal to disclose his SSN. This denied him both his right, benefit, or privilege of applying for and obtaining the license, and burdened his right to bear arms under the state and federal constitutions with a requirement that was obviously in violation of federal law (the Privacy Act).

Item 6 – (This relief was granted by the Court on July 11, 2006 [Doc. 13].

Item 7 – Defendant Cason continues to maintain that employment information is relevant to GFL applications. Defendant Hitchens seeks it on an "optional" basis, under the guise that it will aid in contacting applicants. As shown above, the information requested cannot reasonably be characterized as relevant or pertinent to eligibility under subsection 129(b), and the practice of requesting it should be declared illegal.

Item 8 – As a corollary to Item 7, Defendants should be enjoined permanently from requesting employment information on GFL applications.

Item 9 – Regardless of any action taken by either Defendant since June 14, 2006, Plaintiff was required by Defendants to

disclose his employment information in order to obtain a GFL. Because this practice by Defendants was illegal, they should be ordered to expunge Plaintiff's employment information from their records and systems.

Item 10 – 42 U.S.C. § 1988 provides for attorneys fees for a prevailing party. "If the plaintiff has succeeded on 'any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing the suit,' the plaintiff has crossed the threshold to a fee award of some kind." Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782, 791, 109 S. Ct. 1486, 1493 (1989).

Plaintiff already has been awarded some of the relief he requested, in the form of a TRO requiring Defendant Cason to process his renewal GFL application without his SSN. [Doc. 13]. In addition, Plaintiff had to file a motion [Doc. 19] (which the Court has granted in a Consent Order [Docs 22]) to have a defense exhibit sealed, because the exhibit contained sensitive information. Finally, it is anticipated that Plaintiff will prevail on a substantial portion, if not all, the issues in his current Motion.

Plaintiff requests that the Court award attorneys fees and costs to him. Based on the Court's order on this Motion,

Plaintiff will file supplemental documentation and evidence to support the amount of the fees and costs that should be awarded.

CONCLUSION

The resolution of Plaintiff's case is simple. He is merely asking Defendants to follow the federal and state laws applicable to his situation. Plaintiff has shown that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law. His Motion for Summary Judgment should be granted and he should receive the relief requested in this Memorandum of Law.

SHAPIRO FUSSELL

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Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment was prepared using Courier New 12 point, a font and point selection approved in LR 5.1B.

/s/ John R. Monroe
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