

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

CHRISTOPHER PUCKETT,	)	
	)	
Plaintiff	)	CIVIL ACTION FILE NO.
	)	
v.	)	1:06-CV-2382-BBM
	)	
KELLEY S. POWELL in her	)	
Official capacity as	)	
Probate Judge for	)	
Henry County, Georgia	)	
	)	
Defendant.	)	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION  
FOR CONTEMPT**

Plaintiff, Christopher Puckett, files this Memorandum of Law in Support of His Motion for Contempt.

**Background and Summary**

Plaintiff brought this action against Defendant for, *inter alia*, violations of the federal Privacy Act for failing to give a notice required by the Act when asking a person for his social security account number ("SSN"). On August 2, 2007, this Court declared that Defendant had violated § 7(b) of the Privacy Act and ordered Defendant to provide the required notice in the future. Doc. 36. Plaintiff has learned that Defendant continues to violate the Act (and disobey the Court's Order) by failing to give the required notice, so Plaintiff files this Motion to have Defendant held in contempt.

Argument

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." All three notices are required. The second two 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).

In its Order, the Court found that Defendant violated Section 7(b) for, *inter alia*, failing to inform Plaintiff by what statutory or other authority she requested his SSN when he applied to her for a Georgia firearms license ("GFL"). Doc. 36, p. 7. As a result of this declaration, the Court enjoined Defendant:

[T]he court hereby DIRECTS Defendant to comply in the future with ... §7(b) of the Privacy Act, which provides that if she "requests an individual to disclose his social security account number, she shall inform that individual ... by what statutory or other authority such number is solicited..."

Doc. 36, p. 11.

Since entry of that Order nearly a year ago, Plaintiff has operated under the assumption that Defendant was complying with

the Order. Plaintiff has learned recently, however, that this is not the case. Attached as Exhibits to this Memorandum of Law are two Declarations under penalty of perjury from GFL applicants (from this year) from whom Defendant requested their SSNs without advising them by what statutory or other authority their SSNs were requested. Declaration of Kenneth Sanderson, ¶ 5; Declaration of Rodney Rapes, ¶ 5. One of these GFL applications (Kenneth Sanderson's) was as recent as May 27, 2008.

Given these two randomly-discovered violations, Plaintiff infers that Defendant's standard practice continues to be to request SSNs without complying with § 7(b) and in violation of the Court's Order. If the Court would like additional evidence of violations, Plaintiff requests that the Court open a limited discovery window for the purpose of obtaining such evidence.

Aside from the obvious issue with blatantly disobeying this Court's Order, violating § 7(b) of the Privacy Act is not a mere technical problem or minor issue. "In enacting Section 7, Congress sought 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." Boyle v. Wilson, 529 F. Supp., 1343, 1348 (D. Del. 1982).

An applicant for a GFL, or anyone seeking any government-issued right, benefit or privilege, is under considerable pressure to accede to all requests from the officials empowered to grant the right, benefit or privilege, for fear of being denied. It is imperative that the Privacy Act be followed to avoid unnecessary collection, use, and dissemination of SSNs.

It is no coincidence that Defendant is not informing GFL applicants by what statutory or other authority she requests their SSNs. There is no such authority (and surely if she thought there were such authority, Defendant would attempt to cite it). Thus, the only way Defendant can comply with § 7(b) is not to ask for the SSN in the first place.

The Georgia Department of Public Safety, the state agency charged with creating and disseminating the official GFL application form, came to this conclusion after the Eleventh Circuit reinstated a §7(b) claim against it in *Camp v. Cason*, 220 Fed. Appx. 976, 981 (11<sup>th</sup> Cir. 2007) (unpublished). When faced with having to defend its voluntary request for SSNs on GFL application forms without providing the authority for requesting it, in May 2007 the DPS revised its form so as to

remove the SSN from it altogether, with instructions to all probate judges to destroy old forms. Affidavit of William Hitchens, ¶¶ 17-18 (filed as Doc. 81-3 in *Camp v. Cason*, No. 1:06-CV-1586-CAP, U.S. District Court for the Northern District of Georgia, attached to this Memorandum for the Court's convenience).

Thus, Defendant not only is violating § 7(b) of the Privacy Act and disobeying this Court's Order. She also is disregarding the changed GFL application form issued by the State of Georgia and continuing to ask for SSNs.

#### Remedies

Conventional remedies for disobedience to a court order are inadequate or inappropriate in this case. Aside from the obvious undesirability of incarcerating a sitting probate court judge, this is not a case where Defendant could gain her freedom by purging her contempt. The disobedience to this Court's Order appears to be continuous and ongoing, and not susceptible of a one-time correction.

Likewise, a monetary penalty could not be expected to achieve the desired results. As a government official, any monetary penalties imposed on Defendant likely would be paid by Henry County (just as the nearly \$8,000 in attorney's fees

awarded by the Court in Doc. 43 were paid by Henry County). While Defendant no doubt has some interest in the financial well-being of the county by which she is employed, typical monetary sanctions for contempt are not likely to ensure modified behavior by Defendant (the previous award of attorney's fees apparently did not have this result).

Plaintiff suggests a two-pronged remedy. First, every GFL applicant from which Defendant requested a SSN without notifying the applicant by what authority the SSN was requested (presumably all of them from which she requested the SSN) after the entry of this Court's injunction (i.e., August 2, 2007) should have his or her SSN expunged from Defendant's records. This remedy is appropriate because if Defendant had complied with the Privacy Act and obeyed the Court's injunction, she most likely would not be in possession of these SSNs at all. This remedy would address past violations of the Order.

In order to ensure future obedience to the Order, Plaintiff suggests that the Court appoint a monitor, at Defendant's expense, to oversee the GFL application process in Henry County, for a sufficient period of time to allow the monitor to issue a report. Such report would inform the Court whether Defendant

was complying with the Order or if further remedies and monitoring are necessary.

Finally, if Plaintiff's Motion is granted in whole or in part, Plaintiff requests an award of additional attorney's fees under 42 U.S.C. § 1988 for the effort necessary to enforce the Court's Order. Plaintiff will file an appropriate motion for such fees as the Court may direct in its order on the instant Motion.

**CONCLUSION**

Plaintiff has shown that Defendant has violated and is likely to continue to violate this Court's injunction. Plaintiff's Motion should be granted with appropriate sanctions imposed.

JOHN R. MONROE, ATTORNEY AT LAW

\_\_\_\_\_/s/ John R. Monroe\_\_\_\_\_  
John R. Monroe  
Georgia State Bar No. 516193

9640 Coleman Road  
Roswell, GA 30075  
Telephone: (678) 362-7650  
Facsimile: (770) 552-9318

ATTORNEY FOR PLAINTIFF

**Local Rule 7.1D Certification**

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

\_\_\_\_\_/s/ John R. Monroe\_\_\_\_\_  
John R. Monroe