



Social Security Number Advisory Committee
July 13, 2006 10:00 a.m.
House Room 2, Patrick Henry Building

• **Call to order, roll call.**

Delegate Joe T. May, chairman of the Joint Commission on Technology and Science, called the meeting to order. After the roll call, the members of the advisory committee and JCOTS staff introduced themselves.

• **Overview of the role of JCOTS advisory committees.**

Staff provided a brief introduction to the committee about the role of JCOTS in establishing science and technology policy in the Commonwealth, and how the various advisory committees work with JCOTS in establishing this policy. A copy of this presentation is available on the JCOTS website.

• **Overview of Social Security Number Issues.**

Staff provided an overview of the issues that led to the creation of the Social Security Number Advisory Committee. House Bill 1510, introduced by Delegate Kenneth R. Plum during the 2006 Session of the General Assembly, was referred by the General Assembly to JCOTS for further study. The bill addressed the use of Social Security Numbers by the private sector.

Current law places certain restrictions on the use of Social Security Numbers by private entities and individuals. The Personal Privacy Information Act (§ 59.1-442 et seq. of the Code of Virginia) prohibits an individuals' social security number from being intentionally communicated to the general public; from being printed on a card required to be used by an individual to receive or access products or services; from being used to access a website unless a password or other authentication is also required; or to be displayed on the face of an envelope or package. HB 1510 would add other restrictions on the use of a social security number; specifically the bill would prohibit:

- * Requiring an individual to transmit a social security number over an unsecure or unencrypted Internet site;

- * Printing a social security number on any mailed materials, unless required by state or federal law;
- * Selling or disclosing an individual's social security number without written consent by the individual for the disclosure; and
- * Refusing to do business with an individual because the individual would not consent to disclosure of his social security number, unless such disclosure is required by law.

In examining the provisions of this bill, several other laws and policies relating to the use of social security numbers may become relevant to the discussion. For example, the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801-6810) applies to the disclosure of social security numbers by financial institutions. In addition, use of social security numbers by state public bodies is governed by the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia), which raises the question as to whether use of social security numbers by public and private entities should be held to the same standards.

• Discussion & formulation of work plan:

Delegate May began the discussion by providing some background into some of the issues that were raised about HB 1510 that led to it being referred to JCOTS for further study. He suggested that one task of the advisory committee might be to look at the underlying purposes of each amendment proposed by HB 1510, and to craft language or recommendations to carry out each of those purposes.

In reviewing the bill item by item, the advisory committee first considered the changes on lines 19-21 that would require that a social security number be transmitted over the Internet via a secure or encrypted connection. From a technology perspective, this raises questions as to what is "encryption" or "secure" for purposes of complying with the law. There are many different levels of encryption available for use, but not all might be considered acceptable by the technology industry. It was noted that the language used in this particular proposed amendment was very vague, and might be difficult to sustain if a legal challenge were introduced.

In furthering the "vagueness" discussion, it was suggested that perhaps language might be crafted that would set a minimum industry standard that must be met in order to meet the requirements of such a law (i.e., language that indicated that the information must be "encrypted to a standard not less than..."). Such a standard could potentially have multiple applications throughout the Code of Virginia, and not just when addressing the transmission of social security numbers. It was also suggested that staff review any issues that might involve federal pre-emption regarding the regulation of the transmission of information over the Internet.

It was also noted that many concerns regarding identity theft involve not just the transmission of data, but the storage of that data once it is received. It was suggested that the advisory committee might consider reviewing data storage practices as well.

The only concern raised about the proposed changes on lines 25 and 26, which prohibiting including a social security number on any mailed materials, is that the term

"mail" is very broad. It is not clear whether this would apply only to items sent through the U.S. Mail, or through e-mail, a courier service, UPS, etc.

The changes on lines 27 and 28 would prohibit the disclosure of an individual's social security number without the individual's written consent. Everyone at the table noted the laudable intent behind this proposed provision, but indicated that there were several practical, logistical challenges presented by such a provision. It was suggested that perhaps further discussion of the core intent behind this provision might be warranted, in order to possibly develop a different approach.

It was noted that this issue has been seen in other states. One concern is that sharing this type of information from databases is a key component of how law-enforcement agencies utilize databases of information. Requiring written consent of an individual might potentially thwart the very purpose of an investigation, by encouraging a "bad actor" from shutting down access to his information by refusing to give consent.

In written comments received by Murray Johnston, a member of the advisory committee representing Experian who was unable to attend the meeting, he advised that the sharing of social security numbers can be important in ensuring the accuracy of certain consumer reports, such as for credit, employment, rental housing, and insurance. A copy of Mr. Johnston's statement is available on the JCOTS website under the meeting materials for this meeting.

The final proposed change in the bill on lines 29 through 32 prohibit an entity from refusing to do business with an individual for failure to provide a social security number. The discussion relating to this provision was mixed. Some members of the advisory committee felt that this provision was workable, and mentioned that New York courts have found social security numbers to be private information. Representatives from the business community, however, indicated that this provision would require an entity to do business with someone whom the entity would be unable to verify -- which would be problematic for some credit and financial transactions.

After review of the bill, the discussion turned to other possible avenues of interest for the advisory committee, such as the use of social security number on court records, and on public records generally. It was noted that there is no general Freedom of Information Act exemption that would allow the redaction off of public records.

• **Public comment.**

No public comment was received.

• **Actions for next meeting.**

Delegate May asked the members of the advisory committee to continue to review the language in HB 1510, and to begin to try to formulate language that might address the core intent of the bill while eliminating some of the concerns.

Staff was directed to look into work that the Supreme Court of Virginia is currently undertaking regarding privacy and the dissemination of court records. Staff will also look to the American Bar Association and other such organizations to see what work has been to create model rules. Delegate May also requested that the advisory committee receive an update from local court clerks as to their experiences with technology and access to electronic court records.

As for other topics to review, members of the committee suggested that the advisory committee look at the use of social security numbers on public records generally. It was also noted that it might be helpful to monitor progress under the Real ID Act in the use of an alternative identifier.