

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

GEORGIACARRY.ORG, INC., <i>et. al.</i>)	
)	CIVIL ACTION FILE NO.
v.)	
)	1:09-CV-594-TWT
METROPOLITAN ATLANTA)	
RAPID TRANSIT AUTHORITY, <i>et. al.</i>)	
)	
Defendants)	

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Summary

Plaintiffs brought this action against Defendants for violations of the federal Privacy Act and other state and federal laws. Because the Parties are in agreement regarding the material facts necessary to show violations of the Privacy Act, Plaintiffs bring this Motion for Partial Summary Judgment on the Privacy Act violations (Count 2 of the Complaint – Doc. 1). Plaintiffs seek declaratory and injunctive relief for past and future violations, and attorneys’ fees and costs.

Background

Admitted Facts

Defendants admit to the following facts¹. On October 14, 2008 Defendant Nicholas² (a MARTA police sergeant) was patrolling on foot the South Parking area of the Avondale Train Station (owned and operated by Defendant MARTA). Defendants' Response to Plaintiffs' First Discovery Requests, Interrogatory # 9 [Doc 16-3, p. 6]. Nicholas witnessed Plaintiff Raissi get out of his car, take a gun out of his car, put it in a holster in his back and then pull a shirt over it. *Id.* Nicholas, joined by Defendant Milton (a MARTA police officer), approached Raissi and asked him if he had a gun. *Id.* Nicholas asked Raissi for his identification and his Georgia firearms license ("GFL"), which Raissi presented. *Id.* Nicholas also asked Raissi for Raissi's social security number, which Raissi provided. Defendants' Response to Plaintiffs' First Discovery Requests, Interrogatory # 11 [Doc. 16-3, p. 7]. At the time of the request, neither officer advised Raissi what use would be made of the social security number, by what

¹ Plaintiffs do not necessarily agree with Defendants' recitation of the facts described in this Brief, but for the purposes of this Brief only, Plaintiffs are accepting the facts as recited.

² Defendant Nicholas was identified in the Complaint as Ofc. Doe 1 and Defendant Milton was identified in the Complaint as Ofc. Doe 2. Pursuant to the Court's Scheduling Order [Doc. 5], however, the Court adopted the Parties' Preliminary Report and Discovery Plan [Doc. 4], which on p. 4 established the correct identities of the officers and directed their correct names be used in future filings.

statutory or other authority they requested it, or whether disclosure of it was mandatory or optional. *Id.*; Defendants' Response to Plaintiffs' First Discovery Requests, Request for Admission # 22 [Doc. 16-3, p. 12].

Facts Gleaned from Defendants' Produced Documents

In response to Plaintiffs' First Discovery Requests, Defendants MARTA, Dorsey and Dunham provided Plaintiffs with several documents bearing Raissi's social security number, including 1) a hand-written report by Defendant Nicholas entitled "MARTA Police Department Incident Report;" 2) a type-written report by Defendant Nicholas entitled "Incident Report;" 3) Dispatcher "remarks" on the incident; and 4) an audio recording of the radio traffic of the incident (in which the officers broadcast Raissi's SSN over the public airwaves).³ June 11, 2009 Letter from Defense Counsel to Plaintiffs' Counsel, with produced documents [Doc. 16-2, pp. 5, 12, and 13].⁴

Jurisdiction

³ Ironically, despite the fact that Defendants are being sued for wrongfully requesting and collecting Raissi's SSN, and despite the fact that their discovery responses indicate that they have Raissi's SSN in at least four places in their records, Defendants submitted an interrogatory to Raissi in this case requesting his SSN. Raissi declined to provide it.

⁴ The audio recording is not within this citation. Plaintiff has requested separately that Defendant file the original under seal (because it contains Raissi's SSN).

This Court has jurisdiction over the claim at issue in this Motion because the cause of action is a federal question, violations of the federal Privacy Act (5 U.S.C. § 552a). 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).

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 Defendant agree on what occurred.

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

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.” Defendant 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. 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).

It is undisputed that Defendant failed to give any notice required by the Privacy Act. A violation of a single provision would be sufficient for Plaintiff to prevail on his claim under § 7(b). It cannot be disputed that Defendants violated all three provisions, and therefore Plaintiff Raissi must be awarded judgment as a matter of law on Count 2 of the Complaint [Doc. 1].

It also is clear from the discovery documents produced by Defendants that MARTA maintains a record of Raissi's SSN in multiple places. The dissemination and storage of Raissi's SSN is a direct result of MARTA officials' wrongful collection of the SSN.

Adopting the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 2194, 5 U.S.C. § 552a (note), Congress set forth in Section 2 the following findings:

- (1) The privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal Agencies;

- (2) The increasing use of computers and sophisticated information technology, all essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;
- (3) The opportunities for an individual to secure employment, insurance and credit, and his right to due process, and other legal protections are endangered by his misuse of certain information's systems;
- (4) His right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
- (5) In order to protect the privacy of individuals identified in Information Systems maintained by Federal Agencies, it is necessary and proper for Congress to regulate the collection, maintenance, use, and dissemination of such information by such agencies.

More than 30 years later, Cynthia M. Fagnoni, a Managing Director of the United States Government Accountability Office testified before Congress that nearly 10 million Americans are victims of identity theft in a single year. Ms. Fagnoni attributed this problem in part to the fact that "SSNs are widely exposed in a variety of public records."⁵

Defendants exacerbate this problem by wrongfully and illegally collecting and storing people's SSNs. Because they violated the Privacy Act when they requested Raissi's SSN, they must be found liable as a matter of law.

⁵ Testimony Before the Subcommittee on Social Security, Committee on Ways and means, House of Representatives, March 30, 2006.

Remedies

Plaintiff Raissi seeks a declaration that Defendants violated the Privacy Act by collecting and storing his SSN. In order to mitigate the harm to him from the storage of his SSN in MARTA's records, Raissi also seeks an order for MARTA to expunge it from MARTA's records. "[I]t is now well-established that an order for expungement of records is, in proper circumstances, a permissible remedy for an agency's violation of the Privacy Act." *Hobson v. Wilson*, 737 F.2d 1, 64 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1084, 105 S.Ct. 1843 (1985). Finally, Plaintiffs seek an injunction requiring Defendants, if they choose to request SSNs from citizens in the future, to provide citizens, *prior to requesting the SSN*, with a notice of whether the request is mandatory or optional, by what statutory or other authority the SSN is requested, and what uses will be made of it. The injunction also should prohibit Defendants from retaining citizens' SSNs unless necessary for Defendants' operations. Finally, Plaintiffs seek costs and attorney's fees, and will file an appropriate motion for such at the conclusion of this case.

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_____/s/ John R. Monroe_____

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