

Document: Proposed Rule, **Register Page Number:** 29 IR 1248

Source: January 1, 2006, Indiana Register, Volume 29, Number 4

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

**TITLE 10 OFFICE OF ATTORNEY GENERAL
FOR THE STATE**

Proposed Rule
LSA Document #05-319

DIGEST

Adds 10 IAC 5 to provide definitions, mitigating factors, and notice requirements regarding the release of Social Security numbers by state agencies. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Upon review by the Office of the Attorney General, the Office of the Attorney General has determined that this rule has no fiscal impact on regulated entities. The rule does not impose requirements, restrictions, or sanctions on small business and has no fiscal impact, direct or collateral, on small business or the small business community.

10 IAC 5

SECTION 1. 10 IAC 5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. RELEASE OF SOCIAL SECURITY NUMBERS BY STATE AGENCIES

Rule 1. Authority and Applicability

10 IAC 5-1-1 Authority

Authority: IC 4-1-10-13

Affected: IC 4-1-10

Sec. 1. This article is adopted under the authority granted to the attorney general by the release of Social Security number act (IC 4-1-10-13). *(Office of Attorney General for the State; 10 IAC 5-1-1)*

10 IAC 5-1-2 Applicability

Authority: IC 4-1-10-13

Affected: IC 4-1-10

Sec. 2. The definitions in IC 4-1-10 and 10 IAC 5-2 apply throughout this article. *(Office of Attorney General for the State; 10 IAC 5-1-2)*

10 IAC 5-1-3 Effective date

Authority: IC 4-1-10-13

Affected: IC 4-1-10-1

Sec. 3. The effective date of this article is July 1, 2006. *(Office of Attorney General for the State; 10 IAC 5-1-3)*

Rule 2. Definitions

10 IAC 5-2-1 “Express consent” defined

Authority: IC 4-1-10-13

Affected: IC 4-1-10-5

Sec. 1. “Express consent” means a specific grant of authority made by an individual allowing a state agency to disclose that

individual's Social Security number. The grant of authority shall:

(1) not be given:

- (A) pursuant to or as a condition of a state agency's services that would otherwise be available to the individual; or
- (B) by any person other than the individual to whom the Social Security number has been assigned by the Social Security Administration; and

(2) be:

- (A) given in writing;
- (B) signed by the individual; and
- (C) dated in a legible form as determined by the state agency.

(Office of Attorney General for the State; 10 IAC 5-2-1)

10 IAC 5-2-2 "State law enforcement agency" defined

Authority: IC 4-1-10-13

Affected: IC 4-1-10-4

Sec. 2. "State law enforcement agency" includes the following entities or persons:

- (1) The state police department.
- (2) The office of attorney general for the state.
- (3) The office of the inspector general.
- (4) Prosecutors and their deputies.
- (5) Other state agencies or entities that conduct investigations relating to the enforcement of state law.

(Office of Attorney General for the State; 10 IAC 5-2-2)

Rule 3. Attorney General's Discretion

10 IAC 5-3-1 Mitigating factors

Authority: IC 4-1-10-13

Affected: IC 4-1-10; IC 4-1-11

Sec. 1. The attorney general may, in his or her discretion, determine that the release of Social Security numbers was a negligent act and not a knowing, intentional, or reckless act if a state agency or employee establishes that the following provisions, singly or in combination, have been met:

- (1) The release of the Social Security numbers is immediately stopped.
- (2) Any individuals whose Social Security numbers are disclosed are immediately notified in a timely manner.
- (3) The release of the Social Security numbers was as follows:
 - (A) Unintended.
 - (B) De minimis and nonsystematic.
- (4) The handling of the Social Security numbers was conducted pursuant to a contractual relationship, and the contract contained a clause requiring the state agency and the contractor to comply with the following:
 - (A) The release of Social Security number provisions set forth in IC 4-1-10.
 - (B) The notice of security breach provisions set forth in IC 4-1-11.
- (5) The state agency had established reasonable policies and procedures designed to prevent the unauthorized disclosure of individual Social Security numbers.
- (6) Corrective measures are initiated to prevent future disclosures under similar circumstances.
- (7) Other relevant circumstances as determined by the attorney general.

(Office of Attorney General for the State; 10 IAC 5-3-1)

Rule 4. Notice Requirements

10 IAC 5-4-1 Notification to the attorney general

Authority: IC 4-1-10-13

Affected: IC 4-1-10

Sec. 1. When a state agency becomes aware of a release of Social Security or other personal identifying information, the state agency or employee shall, within two (2) business days of the disclosure, notify the office of attorney general for the state

in writing of the following:

- (1) The nature of any release of Social Security or other personal identifying information.
- (2) The steps taken by the agency or employee to do the following:
 - (A) Stop the current release.
 - (B) Notify the individuals affected.
 - (C) Prevent future releases.

(Office of Attorney General for the State; 10 IAC 5-4-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 3, 2006 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, West Conference Room, Fifth Floor, Indianapolis, Indiana the Office of Attorney General for the State will hold a public hearing on proposed new rules concerning the release of Social Security numbers by state agencies.

These proposed rules will encompass definition of terms, mitigating factors to be considered by the Office of the Attorney General in its investigation and notice to prosecutors and state police, and notice requirements regarding Social Security number releases.

10 IAC 5-4 requires a state agency or employee to notify the Office of the Attorney General, in writing and within two business days of a Social Security number disclosure, the nature of any release of Social Security or other personal identifying information, steps taken by the agency or employee to stop said release, steps taken by the agency or employee to notify affected individuals, and steps taken by the agency or employee to prevent future releases.

This requirement is justified because it provides regulated entities (in this case, state agencies) with guidance on what steps to take when a disclosure occurs, and it gives the Office of the Attorney General an entry point on which to begin its investigation of the matter. If regulated entities are not required to notify the Office of the Attorney General of disclosures, the Office of the Attorney General does not possess any significant means by which to become aware of disclosures. Other requirements imposed by this rule have been added to assist the Office of the Attorney General in its investigation into the disclosure, so that it may accurately analyze the nature of the breach, the person or persons involved, and what types of mitigating factors could or could not be applied before providing notice to prosecutors or the Indiana State Police.

This justification is made based upon the clear intent of the underlying statute and the investigative resources available to the Office of the Attorney General. The Office of the Attorney General did not rely on any data, studies, or analyses beyond that which has been provided above.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jason Thompson
Deputy Attorney General
Office of Attorney General for the State