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May 27, 2005

The Honorable Jo Anne B. Barnhart  
Commissioner  
Social Security Administration  
6401 Security Blvd.  
Baltimore, MD 21235

Dear Commissioner Barnhart,

It has come to my attention that the Social Security Administration used its “ad-hoc authority” to disclose personal information maintained by the agency to law enforcement officials following the terrorist attacks of 9/11. These changes appear to have been made without consultation with the committee of jurisdiction over the Privacy Act in the House of Representatives, the Government Reform Committee and it is unclear how this was communicated with the committee of jurisdiction over the Social Security Administration, the House Ways and Means Committee.

It is my understanding that the use of the “ad-hoc” authority significantly altered its long-standing policy regarding the disclose of information for law enforcement. In the past, SSA disclosed information for law enforcement purposes only in limited situations because of the “especially sensitive or very personal” nature of the information and because participation is mandatory. 20 C.F.R. § 401.155. Release of sensitive personal information was allowed only as follows:

(a) *Serious crimes.* SSA may disclose information for criminal law enforcement purposes where a violent crime such as murder or kidnapping has been committed and the individual about whom the information is being sought has been indicted or convicted of that crime. The Privacy Act allows us to disclose if the head of the law enforcement agency makes a written request giving enough information to show that these conditions are met, what information is needed, and why it is needed.

(b) *Criminal activity involving the social security program or another program with the same purposes.* We disclose information when necessary to investigate or prosecute fraud or other criminal activity involving the social security program. We may also disclose information for investigation or prosecution of criminal activity in other income-maintenance or health-maintenance programs (e.g., other governmental pension programs, unemployment compensation, general assistance, Medicare or Medicaid) if the information concerns eligibility, benefit amounts, or other matters of

benefit status in a social security program and is relevant to determining the same matters in the other program.<sup>1</sup>

According to documents obtained in a Freedom of Information Act (FOIA) request made by the Electronic Privacy Information Center (EPIC), these regulations were changed following September 11, 2001. In a September 13, 2001, memorandum SSA changed its policy to allow the release of social security files to law enforcement agencies indicating that the “information sought is in connection with terrorist activity occurring on September 11, 2001. It is also my understanding that this “ad-hoc authority” was used during the Washington, DC area sniper case.

I believe that this could be viewed as reasonable considering the needed expediency and the needed scope of the investigation into the worst terrorist attack in our nation’s history and the concerns that the DC Sniper may have had terrorist connections. However, I do have questions about the documents released in response to the EPIC FOIA request. I therefore ask you to provide me with answers to the following questions:

1. What were the specific policy changes on the release of sensitive individual information adopted by SSA after the 9/11 attacks?
2. Please explain under what circumstances SSA can use its “ad-hoc” authority?
3. Were you ever asked to make these changes by law enforcement agencies or employees, or were these changes made in anticipation of requests for sensitive individual information?
4. How does the new “ad-hoc” policy comply with the Privacy Act?
5. Was Congress ever informed of your changes to SSA policy? What is the procedure to inform Congress of changes?
6. How many requests for records have been made to SSA since 9/11 under this ad-hoc authority?
7. Has SSA provided information to law enforcement agencies for activity not related to 9/11 under this new policy?

I would appreciate a prompt response to this request. If you have any questions, please do not hesitate to contact Edward Mills in my office at (202) 225-7944.

Sincerely,

  
CAROLYN B. MALONEY  
Member of Congress

cc: Congressman Tom Davis, Chairman, House Government Reform Committee  
Congressman Henry A. Waxman, Ranking Member, House Government Reform Committee  
Congressman William M. Thomas, Chairman, House Ways and Means Committee  
Congressman Charles B. Rangel, Ranking Member, House Ways and Means Committee

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<sup>1</sup> 20 CFR § 401.155.