

This Testimony is Embargoed Until Tuesday, May 8th at 10:00 AM



**HEARING BEFORE**

**THE COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT  
SUBCOMMITTEE ON SOCIAL SECURITY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**MAY 8, 2012**

**STATEMENT  
OF  
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Chairman Johnson, Chairman Boustany, Ranking Members Becerra and Lewis, and Members of the Subcommittees on Social Security and Oversight, thank you for this opportunity to testify about the Death Master file.

With the exception of an 8-month deployment to Afghanistan between 2010 and 2011, I have served as the General Counsel of the Social Security Administration since November 2007. I also serve as the Senior Agency Official for Privacy. The agency maintains sensitive and personal information on almost every American and takes seriously its responsibility to protect it. I can attest to the agency's tireless efforts to protect the personal information the public has entrusted to it.

Let me begin by reiterating Commissioner Astrue's recent testimony before the Social Security Subcommittee that the Administration is committed to striking a balance between transparency that helps prevent fraud and protecting individuals from identity theft, which is consistent with the framework for Chairman Johnson's bill, H.R. 3475. Since Commissioner Astrue's testimony, we have submitted to the Subcommittee specifications for a bill that expresses the Administration's current thinking on how best to strike that difficult balance. We continue to stand ready to work with you, other agencies, and interested organizations to advance a bill that promotes our common goals.

We at Social Security do not generate death data; rather, we collect it from a variety of sources so that we can run our programs. We use death data to stop benefits and to determine eligibility for survivors' benefits.

Individuals and entities became aware that we were gathering this high-value information. In 1978, Ronald Perholtz filed a lawsuit against us under the Freedom of Information Act (FOIA) to gain access to the death information in our files. In 1980, the parties entered into a court-approved consent decree that required the agency to release to Mr. Perholtz the data requested in his lawsuit. The Department of Justice advised us that Congress had not provided an exemption to the FOIA or the Privacy Act that would justify withholding the data covered by the court-approved consent decree.

In 1983, Congress added subsection (r) to section 205 of the Social Security Act. This subsection requires us to collect death information from States to update our program records, provides the circumstances under which certain agencies may receive such information from us, and, notably, exempts the death information we receive from States from FOIA and the Privacy Act. However, Congress did not act to exempt from FOIA our release of death information that we receive from other sources.

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In order for us to manage the demand for FOIA requests for death information and because we had no legal basis to withhold the information, we created a file that we could make available to the public. That file is commonly known as the Death Master File. Since 1992, we have provided the file to the Department of Commerce's National Technical Information Service (NTIS) to distribute because NTIS functions as a national clearinghouse for a wide array of Government data. NTIS reimburses us for the file under a contractual arrangement. NTIS recovers its dissemination costs by making the Death Master File available to 630 entities including banks, hospitals, universities, insurance companies, and genealogical services. In addition, NTIS makes the file available for online searching by many organizations with similar requirements but who do not wish to load the raw data on their internal systems. The financial services community in particular expressed a desire for this ability when the Ways and Means Subcommittee on Social Security and the Financial Services Subcommittee on Investigations and Oversight held a joint hearing on the DMF in November 2001.

Our practice involving the Death Master File remains legally sound, based on FOIA, case law, the Department of Justice FOIA guidance, and OMB's Privacy Act guidance. Any attempt to limit disclosure of death information under current law would undoubtedly spawn additional litigation. More importantly, we see no new judicial interpretation of FOIA or the Privacy Act that would allow us to withhold data on deceased individuals from the general public. Accordingly, the Administration is seeking congressional action to exempt this information from the FOIA to protect countless Americans from the threat of identity theft through abuse of the Death Master File.

Thank you for the opportunity to testify.