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## *The Federal Driver's Privacy Protection Act & the Wisconsin Public Records Law*

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### Can County Law Enforcement Agencies Disclose Personal Information Obtained from State DMV Records in Response to a Public Records Request?

County sheriff's departments routinely access the state's Department of Motor Vehicle (DMV) records to obtain information on drivers. In many instances, the information obtained from DMV records is used for various law enforcement purposes such as issuing citations or writing incident reports. Although local law enforcement agencies regularly access DMV records for use in their daily activities, federal law protects the confidentiality of DMV records and strictly regulates how DMV records can be used.

The federal Drivers Privacy Protection Act<sup>1</sup> (DPPA) restricts the disclosure of a driver's personal information from a state's DMV database without the driver's consent unless one of fourteen statutory exceptions apply. "Personal information" includes information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.<sup>2</sup>

A common problem for local law enforcement agencies is how to balance the DPPA's restrictions on disclosure of a driver's personal information with the agencies' obligation to disclose records under the Wisconsin Public Records Law.<sup>3</sup> Many county

law enforcement records contain a significant amount of personal information obtained from DMV records that would require a considerable amount of time and expense to redact if the DPPA prevents its release.<sup>4</sup>

Wisconsin courts are now grappling with the question of whether the public records law fits within one or more of the exceptions under the DPPA that would allow law enforcement agencies to release driver personal information in response to a public records request. A recent decision from St. Croix County Circuit Court concluded that the public records law does fit within the DPPA exceptions that permit disclosure of a driver's personal information.

In *New Richmond News v. City of New Richmond*, Case No. 13-CV-163 (St. Croix Co. Cir. Ct. March 20, 2014), *New Richmond News* (the newspaper) made a public record request to the City of New Richmond (the city) for four police reports, three of which included driver personal information. The city responded by providing the requested reports with the information redacted that was obtained from the DMV and explained that the information was redacted in accordance with the DPPA. The newspaper filed a complaint against the city seeking a declaration that the DPPA did not require the

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city to redact the information or otherwise alter the city's responsibilities under the public records law.

After reviewing the statutory requirements under the DPPA and the Public Records Law, the circuit court concluded that the city could disclose the personal information in the requested records under two of DPPA exceptions. First, the court found that the release of the information in response to the public records request fit within the DPPA exception under Section 2721(b)(1). Section 2721(b)(1) permits "the use of personal information by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions." The court found that compliance with the public records law was an essential function of the city that fit within the umbrella of Section 2721(b)(1).

The court also found the city could release the personal information under the DPPA exception in Section 2721(b)(14). Section 2721(b)(14) permits the use of personal information for any use "specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety." The court observed that under Wis. Stat. § 346.70(4), uniform traffic accident reports are required to be disclosed upon request. The court found that such disclosure is directly related to public safety of the city as enforced by the police department. The court concluded that the required disclosure of uniform traffic accident reports fell within the exception in Section 2721(b)(14) as a use related to the operation of a motor vehicle or public safety.<sup>5</sup>

The circuit court's decision in *New Richmond News* is currently on appeal to the Wisconsin Court of Appeals. Circuit court decisions do not have precedential (binding) effect on other courts. Therefore, until a published opinion is issued by the court of appeals or the Wisconsin Supreme Court, the legal question remains unresolved as to whether a county law enforcement agency should or should not redact personal information obtained from DMV records in response to a public records request.

Until appellate courts provide further guidance, counties should work with requesters to determine

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whether the requester is requesting access to personal information that may be protected by the DPPA and whether the disclosure of the personal information falls within one of the DPPA's exceptions. We will continue to update you as the *New Richmond News* case proceeds through the appellate process.

#### END NOTES:

<sup>1</sup> The DPPA is codified at 18 U.S.C. § 2721

<sup>2</sup> 18 U.S.C. §§ 2721(a)(1), 2725(3).

<sup>3</sup> Wis. Stat. §§ 19.31-19.37

<sup>4</sup> Law enforcement agencies cannot charge a public records requester for the cost of redacting information from a record. *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65.

<sup>5</sup> The circuit court's conclusions are consistent with an informal Wisconsin attorney general opinion which also concluded that the DPPA exception under Section 2721(b)(1) applies when responding to requests for public records containing personal information and that the exception under Section 2721(b)(14) applied to personal information contained in uniform traffic accident reports and similar records related to vehicle accidents, driving violations or driver status. See OAG I-02-08. However, attorney general opinions do not have precedential effect on courts although they may have persuasive effect when a court interprets a statute.