Records, traffic infraction notices

Number: INFORMAL

Date: May 12, 2010

Subject:
Records, traffic infraction notices

Mr. Leonard G. Rubin
701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407-1950

Dear Mr. Rubin:

As Town Attorney for Juno Beach, you have asked for this office's assistance in determining whether section 119.0712(2), Florida Statutes, prohibits the town from offering for inspection and copying notices of infraction for speed zone violations issued pursuant to a town street safety program. The following informal opinion is provided by the Department of Legal Affairs in an effort to provide you with guidance in this matter.

According to your letter, the town adopted an ordinance authorizing the use of "image capture technology" to issue notices of infraction to the owners of vehicles that were committing "red zone infractions" (proceeding through an intersection when the traffic control device is emitting a steady red signal) or "speed zone infractions" (traveling in excess of the posted speed limit). The town administers the ordinance through a contract with a private vendor.

Your letter advises that after an infraction is recorded, the town's vendor obtains the name of the vehicle owner, the vehicle owner's address and other identifying information from records held by the Florida Department of Highway Safety and Motor Vehicles through the National Law Enforcement Telecommunication System, using the Town of Juno Beach Police Department's Originating Agency Indicator number. The town's traffic control infraction reviewer reviews the photographs and the speed measurements to verify that a speed zone infraction has occurred, and the town's vendor issues a notice of infraction to the vehicle owner. The town has received a public records request seeking information including the names and addresses of all persons who were issued notice of infraction by the town during a one-year period. The town has determined that the only way to provide the requested information from records held by the town or its vendor is to produce copies of the more than 8,600 actual notices issued by the town.

Section 119.0712, Florida Statutes, is entitled "[e]xecutive branch agency-specific exemptions from inspection or copying of public records" and is specifically directed to executive branch state agencies. The statute, as amended in 2009,[1] reads as follows:

"(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—
(a) For purposes of this subsection, the term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

* * *

(d) The department may adopt rules to carry out the purposes of this subsection and the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Rules adopted by the department may provide for the payment of applicable fees and, prior to the disclosure of personal information pursuant to this subsection or the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., may require the meeting of conditions by the requesting person for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires."

The department has not adopted administrative rules to carry out the purposes of this statute and the federal Driver's Privacy Protection Act of 1994.

The Driver's Privacy Protection Act (DPPA), 18 U.S.C. ss. 2721 *et seq.*, is the federal enactment prohibiting the release and use of certain personal information from State motor vehicle records. The DPPA provides that "a State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity" personal information or highly restricted personal information as those terms are defined in the act. The DPPA contains exceptions to its confidentiality terms for permissible uses. Thus, personal information and highly restricted personal information shall be disclosed for use "by any government agency, including any court or law enforcement agency, in carrying out its functions."[2] This information may also be disclosed by a state department of motor vehicles for use in connection with private litigation, the execution or enforcement of judgments and orders,[3] for use by insurance companies in investigating claims, and for use by employers to verify information relating to holders of commercial driver's licenses.[4] Thus, personal information and highly restricted personal information are available to private entities for business purposes under the restrictions placed on that information by sections 119.0712 and the DPPA. As a federal court has stated, the DPPA delegates to the states authorization for disclosure of drivers' personal data and thereby permits, for example, personal information resellers, if they are authorized by a state or its department of motor vehicles, to obtain drivers' personal information for purposes of redistribution to persons for "permissible uses."[5] Permissible uses for the personal information referred to in the federal DPPA include "use by any government agency, including any . . . law enforcement agency, in carrying out its functions[.]" Thus, personal information, that is

"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 . . ."

may be disclosed by the state department of motor vehicles to a law enforcement agency for purposes of facilitating the agency's performance of its functions. Any such motor vehicle records would be confidential in the hands of the law enforcement agency.[6] However, to the extent information is taken from these records and used in preparing other records of the law enforcement agency or its agent, the confidentiality requirements do not reach records created by subsequent users. Section 119.0712(2), Florida Statutes, and the federal DPPA address the obligation of state motor vehicle departments to keep certain information maintained by those agencies confidential and exempt and the confidential status of those records in the possession of local law enforcement agencies. Once personal information contained in a motor vehicle record is received from the department and used in the creation of new records, however, it is no longer protected by the DPPA or section 119.0712(2), Florida Statutes.

It appears from your description of these records that the information requested by the Palm Beach Post is received by the vendor from the Department of Highway Safety and Motor Vehicles and used by the vendor to produce a notice of infraction to the vehicle owner. As this office concluded in Attorney General Opinion 2010-10, the confidentiality provisions of the statute do not reach to records created by local law enforcement or an agent of local law enforcement which may contain personal information as described in section 119.0712(2), Florida Statutes. Thus, it would appear that section 119.0712(2), Florida Statutes, would not act as a bar against the Town of Juno Beach producing copies of notices of infraction for speed zone violations issued pursuant to the town's street safety program and that the city is under an obligation to allow inspection and copying of these records.

I trust that these informal comments will be of assistance to you in resolving this matter.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* Ch. 2009-153, Laws of Fla.

[2] 18 U.S.C. s. 2721(b)(1).

[3] 18 U.S.C. s. 2721(b)(4).

[4] 18 U.S.C. s. 2721(a)(1) and (2), and (b)(1),(4),(6) and (9).

[5] *Russell v. ChoicePoint Services, Inc.*, 300 F.Supp.2d 450 (E.D. La., 2004).

[6] *See* Op. Att'y Gen. Fla. 2004-54.