Motor Vehicle Records--Driver's Privacy Protection Act

Number: AGO 2010-10

Date: April 14, 2010

Subject:
Motor Vehicle Records--Driver's Privacy Protection Act

Ms. Patricia T. Gross
General Counsel
Lake County Sheriff's Office
360 West Ruby Street
Tavares, Florida 32778

RE: MOTOR VEHICLE RECORDS – PUBLIC RECORDS – DRIVERS LICENSE – DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES – DRIVER'S PRIVACY PROTECTION ACT – confidentiality of information contained in records of Department of Highway Safety and Motor Vehicles and used by local law enforcement agency. s. 119.0712(2), Fla. Stat., and 18 U.S.C. s. 2721 *et seq.*

Dear Ms. Gross:

As General Counsel to the Lake County Sheriff's Office, you have asked substantially the following questions:

1. Pursuant to section 119.0712(2), Florida Statutes, is a driver's license number that is included in a law enforcement officer's report confidential or exempt from disclosure and copying if that information:
a. was obtained from a statement by the owner of the driver's license;
b. was obtained by the officer when viewing the driver's license; or
c. was obtained from viewing a record of the Department of Highway Safety and Motor Vehicles?

2. Is a driver's signature, photograph, name, address, license number, license classification, date of birth, license issuance date, license expiration date, license duplicate date, and/or organ donor status confidential or exempt from disclosure and copying as "personal information" or "highly restricted personal information" within the scope of the Driver's Privacy Protection Act and section 119.0712(2), Florida Statutes?

In sum:

1. Pursuant to section 119.0712(2), Florida Statutes, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying whether that information:
a. was obtained from a statement by the owner of the driver's license;
b. was obtained by the officer when viewing the driver's license; or
c. was obtained from viewing a record of the Department of Highway Safety and Motor Vehicles.

2. "Personal information" and "highly restricted personal information" as those terms are defined by 18 U.S.C. s. 2721 *et seq.* and as that information is contained in motor vehicle records may be released by the Department of Highway Safety and Motor Vehicles as authorized by the federal Driver's Privacy Protection Act. The federal act authorizes the disclosure of this information to a law enforcement agency for purposes of "carrying out its functions[.]" Motor vehicle records supplied by the department to a local law enforcement agency continue to be confidential when held for permissible uses within the scope of the statute and federal provisions. However, the statute does not provide confidentiality for information outside the scope of the federal act or information included in records created by a local law enforcement agency.

According to your letter, you have questions as to whether some or all of the information contained in a person's motor vehicle record or on a person's driver's license is a public record when that information is in the hands of law enforcement agencies and must or may be provided to a person requesting a copy of a law enforcement officer's report. You have requested our assistance in determining the extent to which this information is a public record subject to disclosure and copying pursuant to section 119.0712(2), Florida Statutes.

Question One

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 (hereafter "the DPPA").

The Driver's Privacy Protection Act, 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 redistribtution to persons with "permissible uses."[5] The DPPA was enacted by Congress, as part of the Violent Crime Control and Law Enforcement Act of 1994, (*See* s. 300002, Pub. L. 103-322, enacting the chapter; *and see* s. 300001 of Pub. L. 103-322, stating that the title enacting the chapter may be cited as the "Driver's Privacy Protection Act of 1994") to regulate information collected from citizens by the state[6] and represents a response to reports of crimes committed by stalkers who obtained their victims' home addresses from a state department of motor vehicle records.[7] While commercial use of personal information from motor vehicle records was a concern of Congress, the DPPA was enacted as a crime fighting measure, not a general privacy protection measure.[8] The DPPA does not impose a burden upon local law enforcement agencies to regulate disclosure of records created by those local agencies, rather, the federal act, as implemented through section 119.0172, Florida Statutes, speaks to records of the Department of Highway Safety and Motor Vehicles and the release by the department of information contained in the Department of Highway Safety and Motor Vehicles' records for permissible uses.

Substantially similar provisions for the confidentiality of personal information contained in motor vehicle records were previously contained in section 119.07(6)(aa), Florida Statutes, and have been reviewed by this office in several Attorney General Opinions.[9] In Attorney General Opinion 2004-54, this office recognized that personal information obtained from the department by a law enforcement agency pursuant to one of the enumerated approved uses would maintain its protected status.[10] The statute listed those instances in which personal information could be released by the department and specifically authorized the release of motor vehicle information for the use of any governmental agency, including any law enforcement agency in carrying out its functions.[11] In that opinion, a sheriff had asked whether the protections of section 119.07(6)(aa), Florida Statutes (2003), allowed the sheriff's office to exempt driver identification numbers and other identifying information that could be present in records of the sheriff's

department. It was concluded that the plain language of section 119.07(6)(aa), affected only personal information contained in a motor vehicle record generated or held by the Department of Highway Safety and Motor Vehicles and would not extend to the records of other public agencies.

Subsequently, in Attorney General Opinion 2005-61, these statutory confidentiality provisions were discussed in relation to a list of jurors' names and addresses prepared by the clerk of court and obtained from drivers' license or identification card records of the Department of Highway Safety and Motor Vehicles. The opinion recognizes that the plain language of section 322.20(9), Florida Statutes, authorizes the Department of Highway Safety and Motor Vehicles to give identifying information to the courts for the purpose of establishing jury selection lists, but prohibits the courts from selling, giving away, or allowing the copying of such information. In that instance, the opinion concludes that the list of names obtained from the department was afforded the protections of sections 119.07(6)(aa) and 322.20(9), Florida Statutes 2003, but that such protections did not extend to a jury list created by the clerk of the court pursuant to his or her duties under Chapter 40, Florida Statutes.

As amended in 2009, the revised version of these confidentiality provisions contained in section 119.0712(2), Florida Statutes,

"removes codification of the federal law. Instead, the bill makes it clear that personal information, including highly restricted personal information, contained in a motor vehicle record is confidential pursuant to the DPPA [Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq*.] by cross-referencing the federal law and its protections. Further, it provides that the information may be released only as authorized by the federal act."[12]

As was the case with its state legislative predecessor, staff analysis for section 119.0712(2), Florida Statutes, indicates that these changes will have no fiscal impact on local governments. As this office noted in an Informal Attorney General Opinion discussing an earlier codification of section 119.0712, Florida Statutes, if the Legislature intended this statute to require local law enforcement agencies to delete certain information contained in their records, such an impact should have been noted.[13]

Pursuant to Title 18 U.S.C. s. 2721(a), a state department of motor vehicles may not knowingly disclose or otherwise make available to any person or entity either "personal information"[14] or "highly restricted personal information"[15] when this information has been obtained by the state department of motor vehicles in connection with a motor vehicle record. However, like Florida's previous statutes, the federal act recognizes exceptions for permissible uses of this information.

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.[16] However, to the extent information is taken from these records and used in preparing other records of the law enforcement agency, the confidentiality requirements do not reach records created by subsequent users. Further, this statute does not speak to a situation in which a driver produces his or her motor vehicle license or other motor vehicle record for use by a law enforcement agency. 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.

Thus, it is my opinion that pursuant to section 119.0712(2), Florida Statutes, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying whether that information

"a. was obtained from a statement by the owner of the driver's license;
b. was obtained by the officer when viewing the driver's license; or
c. was obtained from viewing a record of the Department of Highway Safety and Motor Vehicles."

A driver's license number is "personal information" within the scope of section 119.0712(2), Florida Statutes, and is confidential as it is held and maintained in a "motor vehicle record" by the Florida Department of Highway Safety and Motor Vehicles. This information continues to be confidential in the hands of local law enforcement for permissible uses within the scope of the statute and federal provisions. However, the statute does not reach to records created by local law enforcement which may contain such personal information.

Question Two

Your second question relates to both "personal information" and "highly restricted personal information" as those terms are defined by Title 18 U.S.C. s. 2725 and as that information is contained in a motor vehicle record. Section 119.0712(2)(b), Florida Statutes, provides that "[p]ersonal 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 act. However, the Florida statute allows the release of such information "only as authorized by that act [the DDPA]." Thus, the Florida Legislature has made certain Florida records subject to disclosure only as authorized under federal legislation.

The federal DDPA defines "personal information" as follows:

"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."[17]

"[H]ighly restricted personal information" is defined as "an individual's photograph or image, social security number, medical or disability information[.]"[18] The federal act also provides that the restrictions on the disclosure of highly restricted personal information "shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States."[19]

As provided in the federal act, personal information within the scope of the act may be disclosed by the state department of motor vehicles for use by any governmental agency, including a law enforcement agency, for "carrying out its functions."[20] Thus, as discussed above, personal information contained in a motor vehicle record of the Florida Department of Highway Safety and Motor Vehicles may be disclosed by that agency to another governmental agency to carry out government functions. The confidential nature of this personal information obtained from state motor vehicle records applies to records of the Florida Department of Highway Safety and Motor Vehicles and to those records provided to local law enforcement for permissible uses within the scope of the statute and federal provisions. Again, however, I would note that the statute does not extend confidentiality to personal information gathered from Department of Highway Safety and Motor Vehicles' records and used to create new records for use by a law enforcement agency.

In sum, "personal information" and "highly restricted personal information" as those terms are defined by 18 U.S.C. s. 2721 *et seq.* and as that information is contained in motor vehicle records may be released by the Department of Highway Safety and Motor Vehicles as authorized by the federal Driver's Privacy Protection Act. The federal act characterizes as a "permissible use," the disclosure of this information to a law enforcement agency for purposes of "carrying out its functions[.]" Motor vehicle records supplied to a local law enforcement agency continue to be confidential when held for permissible uses within the scope of the statute and federal provisions. However, the statute does not provide confidentiality for information outside the scope of the federal act or information included in records created by a local law enforcement agency.

Sincerely,

Bill McCollum
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] *O'Brien v. Quad Six, Inc.,* 219 F.Supp.2d 933 (N.D. Ill. 2002). *And see* Inf. Op. to Rep. Heyman, dated Sept. 5, 1997.

[7] *Camara v. Metro-North Railroad Company*, 596 F. Supp. 2d 517 (D. Conn. 2009).

[8] *Camara, supra*.

[9] *See* Note B., s. 119.0712, Fla. Stat.

[10] *See also Ragsdale v. State*, 720 So. 2d 203 (Fla. 1998) (applicability of particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

[11] Section 119.07(6)(aa)2., Fla. Stat. (2004).

[12] Florida House of Representatives Staff Analysis, CS/HB 7027, dated April 1, 2009.

[13] *See* Inf. Op. to Hon. Sally Heyman dated September 5, 1997.

[14] 18 U.S.C. s. 2725(3) defines "personal information" as "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."

[15] *See* 18 U.S.C. s. 2725(4) which defines the term as "an individual's photograph or image, social security number, medical or disability information[.]"

[16] *See* Op. Att'y Gen. Fla. 04-54 (2004).

[17] 18 U.S.C. s. 2725(3). *And see Camara v. Metro-North Railroad Company*, 596 F. Supp. 2d 517 (D. Conn. 2009) (DPPA did not require that driver histories be excised of all personal information unless requestor had DPPA permitted use; such reading did not comport with legislative history nor plain language of statute.)

[18] *See* 18 U.S.C. s. 2725(4).

[19] *See* 18 U.S.C. s. 2721(a)(2).

[20] 18 U.S.C. s. 2721(b)(1).