



ALAN WILSON
ATTORNEY GENERAL

April 6, 2011

Mr. Kevin A. Shwedo
Executive Director
SC Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016

Dear Mr. Shwedo:

We received a letter from Ms. Marcia Adams, former Executive Director of SC Department of Motor Vehicles, requesting an opinion of this Office concerning the applicability of the Drivers' Privacy Protection Act with a data request by the South Carolina Court System.

As a way of background, you provided that the Family Court Case Management System, through the South Carolina Court Administration, has sought to receive electronic images of driver license photographs for the purpose of printing the photos on bench warrants, arrest warrants, and orders of protection. The concern does not lie in sharing information with a legitimate government entity, as allowed under 18 U.S.C. § 2721(b)(1), but there is concern that once the photographic images of individuals are incorporated into warrants, they will become public information. You asked whether "the proposed use of the driver's license pictures, even if initially permissible for the business of the courts, could comply with the Drivers' Privacy Protection Act once the data was incorporated into publically available documents."

Law/Analysis

The federal Drivers' Privacy Protection Act of 1994 instructs state departments of motor vehicles to not disclose personal information¹ or highly restricted personal information.² 18 U.S.C. § 2721 *et seq.* However, if an exception applies to the above mentioned law, then such information may

¹ 18 U.S.C. § 2721(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."

² 18 U.S.C. § 2721(4) defines "highly restricted personal information" as "an individual's photograph or image, social security number, medical or disability information."

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be shared in certain circumstances. For example, the Act permits use of personal driver information "by any government agency, including any court or law enforcement agency, in carrying out its functions." 18 U.S.C. § 2721(b)(1). Also, the Act permits driver information to be used in "connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court . . . , including services of process" 18 U.S.C. § 2721(b)(4).

A court would almost certainly find that South Carolina Court Administration (Courts) is a permissible user under the above described exceptions. Therefore, the central issue is how the personal information is handled once Court Administration receives it.

In relevant part, 18 U.S.C. § 2721(c) addresses redisclosure of data by permissible users as follows:

An authorized recipient of personal information . . . may resell or redisclose the information only for a use permitted under subsection (b) **Any authorized recipient . . . that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.**

18 U.S.C. § 2721(c) (emphasis added). There should be no prohibition on redisclosure so long as the Courts use the information as permitted under 18 U.S.C. § 2721(b).

In late 1999, the Courts expressed interest in including photographs on arrest warrants. Pursuant to S.C. Code § 17-13-160, the Attorney General must approve the form of arrest warrants and search warrants issued by the State or any political subdivision. So, in January 2000, this Office approved Court Administration's request to permit "computer generated arrest warrants with a laser printer and to include a picture of the defendant on the warrant."

By mid-2006, the SC Judicial Department and the Chief Justice of the South Carolina Supreme Court requested that the SC Department of Motor Vehicles (DMV) include photo images of drivers in the interface between DMV and the SC Judicial Department. On June 8, 2006, DMV issued a letter to the Chief Justice explaining that DMV staff was, pursuant to the Court's request, instructed to provide photographs from DMV records to the Courts for the purpose of printing such information and photographs on arrest warrants to assist law enforcement officers. A Memorandum of Understanding was established between South Carolina Court Administration and the South Carolina Department of Motor Vehicles which set forth the

agreement concerning the Electronic Ticket Interface (ETI). The Memorandum of Understanding explains that DMV would provide access to a Driver's License Summary Web Service for the Courts to use to pre-populate the identity fields of electronic tickets with validated SC DMV driver's license information such as: driver license number, full name, address, date of birth, height, weight, and sex. The agreement stated that the **"Court will not be allowed to use the Driver's License Summary Web Service for any purpose other than the creation and transmission of electronic tickets."**

While this Office agrees that photographs may be placed on arrest warrants, and the DMV has agreed to share drivers' personal information with the Courts, the concern remains that such personal information and photographs would become public information.

In an opinion of this Office dated November 16, 2006, we summarized the penalties for those who violate the provisions of the federal Drivers' Privacy Protection Act:

The Drivers' Privacy Protection Act sets forth criminal and civil penalties against those who fail to comply with its prohibitions. A criminal fine for violators is set forth by 18 U.S.C.A. §§ 2723(a). As to violations by a State department of motor vehicles,

[a]ny State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance.

Also, individuals who knowingly obtain, disclose, or use personal information from a DMV for a purpose which is not permitted under the DPPA may be subject to civil liability in any action brought by the driver to whom the information pertains. 18 U.S.C.A. §§ 2724(a) and (b). Pursuant to such provision, any such violators of the DPPA may be liable for the following: (1) actual damages (but not less than liquidated damages in the amount of \$2,500); (2) punitive damages; (3) attorney's fees and other litigation costs; and (4) preliminary and equitable relief.

Op. S.C. Atty. Gen., November 16, 2006. It does not appear that the DMV would be found in "substantial noncompliance with [the above mentioned] chapter;" in fact, the DMV is in compliance with the Drivers' Privacy Protection Act when sharing information with the Courts. Therefore, the DMV should not be subject to penalty.

The South Carolina Code of Laws of 1976 addresses the need for DMV records, specifically personal information and photographs, to be protected. Under the SC Freedom of Information Act, photographs from DMV records may not be provided to a private party. S.C. Code §30-4-160 states as follows:

(A) This chapter **does not allow the Department of Motor Vehicles to sell, provide, or otherwise furnish to a private party** Social Security numbers in its records, copies of **photographs**, or signatures, whether digitized or not, **taken for the purpose of a driver's license** or personal identification card.

(B) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

S.C. Code §30-4-160. See also, S.C. Code §56-3-545 ("The Department of Motor Vehicles may not sell, provide, or otherwise furnish to a private party Social Security numbers, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card. A Social Security number, photograph, signature, or digitized image from a driver's license or personal identification card is not a public record.")

S.C. Code §30-4-165 further protects the privacy of driver's license information as follows:

(A) The **Department of Motor Vehicles may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, photograph, or signature in any form that has been compiled for the purpose of issuing the person a driver's license** or special identification card. The department shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.

(B) A person's height, weight, race, photograph, signature, and digitized image contained in his driver's license or special identification card record are not public records.

(C) Notwithstanding another provision of law, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.

S.C. Code §30-4-165. In the above mentioned sections, the South Carolina Code specifically states that such personal information should not be provided to *private parties*. See also, Op. S.C. Atty. Gen., December 23, 2003. However, there is no discussion as to sharing this information amongst government agencies, as permitted under 18 U.S.C. § 2721(b)(1).

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In the November 16, 2006 opinion, we concluded that there are certain permissible uses of motor vehicle record information; however, this Office noted that some ambiguity remains:

The law does not specify what activities may be considered as the **“carrying out” of “functions” by a “government agency”**, what are “matters of motor vehicle or driver safety” or what is a “use specifically authorized under the law of the State that holds the record...related to the operation of a motor vehicle or public safety.” Also, as set forth by Section 2725 (3), the term “personal information” “. . . does not include information on vehicular accidents, driving violations, and driver's status.”

Op. S.C. Atty. Gen., November 16, 2006 (emphasis added).

Nevertheless, the S.C. Code is clear that the DMV may not provide information from one's driver's license or identification card to a private party. Under 18 U.S.C. § 2721(b)(1), The Drivers' Privacy Protection Act permits information from state DMVs to be shared with government agencies. However, any subsequent use of the information must also comply with the Drivers' Privacy Protection Act. According to the information provided in the request letter, both the DMV and the Courts appear to be in compliance with the Drivers' Privacy Protection Act.

On August 13, 2007, the South Carolina Supreme Court issued an order providing “Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.” While not specifically applicable to information provided by the DMV, such guidance is useful. The Court acknowledged that “[u]nder the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991).” To address the privacy concerns at issue, the Supreme Court instructed parties to “partially redact” the filed documents to exclude social security numbers, names of minor children, financial account numbers and home addresses. Similarly, 42 U.S.C. § 405 explains that social security numbers must be redacted before a document becomes public.

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Conclusion

This Office has repeatedly indicated that we do not in an opinion construe federal law. However, it is clear from our South Carolina Code of Laws that private parties, nor the public at large, should have access to DMV records of one's personal information and photograph. See, S.C. Code §30-4-160; S.C. Code §30-4-165; S.C. Code §56-3-545.

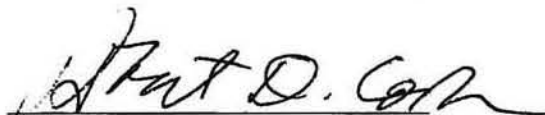
In the instance before us, the DMV is providing the Courts with such information, not a private party. Therefore, neither S.C. Code §30-4-160 nor S.C. Code §30-4-165 poses an impediment to the DMV sharing information with the Courts and relevant law enforcement agencies. See, 18 U.S.C. § 2721(b). It is the opinion of this Office that, consistent with the above mentioned Memorandum of Understanding, the DMV may continue to share personal information, including photographs, with the Courts. Additionally, it is the opinion of this Office that there is no prohibition on redisclosure of such information by the Courts, so long as the Courts are redisclosing information for permissible purposes, such as making court documents public record in their ordinary course, under 18 U.S.C. § 2721(c).³ See, Burton v. York County Sheriff's Dept., 358 S.C. 339, 351-52, 594 S.E.2d 888, 895 (2004).

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

³ Social Security Numbers included on a warrant or like document must be redacted before it becomes public. See, 42 U.S.C. § 405.