



ALAN WILSON
ATTORNEY GENERAL

August 2, 2021

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

Dear Mr. Shwedo:

You have requested an opinion of this Office regarding the legality of the South Carolina Department of Motor Vehicles (“SCDMV”) participating in a digital image sharing program with other state departments of motor vehicles (“DMVs”). You inform us that participants in the program electronically share digital images of drivers’ licenses, beginners’ permits, and personal identification cards with each other. The program does not involve a national data base and does not require payment.

According to your letter, the participating DMVs agree by contract that they will only use the digital images for visual identification of a license applicant, which includes the use of facial recognition technology. An exception is that the images can be used for detecting and prosecuting license fraud and related violations.

The participants also agree by contract to be bound by the federal Driver Privacy Protection Act (“DPPA”), 18 USC §2721, especially the sections dealing with “personal” and “highly restricted personal information,” as defined by the Act. You state that the sharing of digital images is authorized by DPPA when the information is used to assist a state DMV in carrying out its governmental functions.

You are requesting an opinion on whether participation in the digital image sharing program violates S.C. Code §§ 30-4-160 and 30-4-165. According to your letter, “SCDMV believes that such participation does not violate South Carolina law specifically because the images would not be sold to other State DMVs participating in this image sharing program and would not be provided to any private party.”

LAW/ANALYSIS

Because it was included in your letter, we will begin with a brief discussion of DPPA. Pursuant to DPPA, a state department of motor vehicles (“DMV”) is prohibited from disclosing a driver’s personal information or highly restricted personal information (collectively “personal information”).¹ See 18 U.S.C.A. §2721. However, there are exceptions. For example, a DMV is permitted to disclose a driver’s personal information “for use by any government agency . . . in carrying out its functions . . .” Id. DPPA does not define the “functions” that are carried out by a government agency.

DPPA also addresses the subsequent use of personal information by a recipient. It provides that a recipient can only resell or redisclose the information for a purpose permitted by the statute. See Id. A recipient is required to keep records for five years “identifying each person or entity that receives information and the permitted purpose for which the information will be used . . .” Id. These records must be available for inspection by the DMV who provided the information.

Your question involves sections 30-4-160 and 30-4-165, which are included in South Carolina’s Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 et seq. (1976 Code, as amended). Pursuant to section 30-4-160, SCDMV is prohibited from selling or disclosing certain information in a driver’s license or personal identification card to a private party:

(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 Ann. § 30-4-160 (1976 Code, as amended) (emphasis added).

Section 30-4-165 addresses the “privacy of driver's license information,” providing:

(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

¹ “Personal information” is defined 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.” 18 U.S.C.A. § 2725. “‘Highly restricted personal information’ means an individual's photograph or image, social security number, medical or disability information.” Id.

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 Ann. § 30-4-165 (1976 Code, as amended) (emphasis added).²

A 2011 opinion of this Office involved a request from South Carolina Court Administration ("Court Administration") for electronic images of driver's license photographs to use on warrants. See Op. S.C. Atty. Gen., 2011 WL 1740736 (April 6, 2011). The issue was whether the use of the photographs on warrants, which were publically available documents, would comply with DPPA.

We opined that a court would likely find that Court Administration was a permissible recipient of the photographic images pursuant to the exceptions in DPPA.³ After considering the use of the images in warrants, it was our opinion that "there is no prohibition on redisclosure of such information by the Courts [Court Administration], so long as the Courts are redisclosing information for permissible purposes, such as making court documents public record in their ordinary course, under 18 USC 2721(C)." Id. We also determined that it would not be a violation of sections 30-4-160 and 30-4-165 of FOIA for SCDMV to share the photographic images with Court Administration because Court Administration was not a private party.

CONCLUSION

Interpreting federal law is beyond the scope of our opinions. See Op. S.C. Atty. Gen., 2011 WL 1740736 (April 6, 2011) ("This Office has repeatedly indicated that we do not in an opinion construe federal law.") Accordingly, we will focus on your question regarding South Carolina

² Although it is not part of FOIA, section 56-3-545 also prohibits the SCDMV from selling or disclosing certain information in a driver's license or special identification card to a private party. See S.C. Code Ann. § 56-3-545 (1976 Code, as amended).

³ The exceptions permitted a DMV to disclose a driver's personal information to a court carrying out its functions and in connection with a court proceeding, which included service of process. See 18 U.S.C.A. §2721 (b)(1), (4).

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law. We agree with SCDMV's conclusion that participation in the digital image sharing program would not violate sections 30-4-160 and 30-4-165 of South Carolina's Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10 et seq. The plain language of the statutes prohibits SCDMV from selling or disclosing information from a driver's license or a personal identification card to a private party. SCDMV is not prohibited from providing such information to a government agency, such as a state department of motor vehicles.

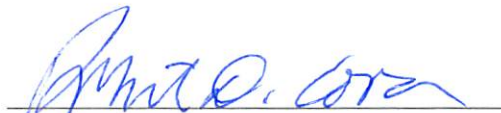
The statutes do not address a subsequent use of personal information by a lawful recipient. A lawful recipient is therefore not prohibited by FOIA from redisclosing information from a driver's license or a personal identification card for such purposes as a legitimate government function or in connection with a criminal court proceeding.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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