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HENRY McMASTER  
ATTORNEY GENERAL

November 16, 2006

Marcia S. Adams, Executive Director  
Department of Motor Vehicles  
Post Office Box 1498  
Blythewood, South Carolina 29016

Dear Ms. Adams:

In a letter to this office you referenced the following provision of S.C. Code Ann. § 56-5-3000 which states:

The Department of Motor Vehicles shall on or before the tenth day of each month release to the public the names and addresses of all persons whose drivers' licenses are suspended under Section 56-5-2990<sup>1</sup> during the preceding month. The person so publishing the names of such persons whose drivers' licenses are so suspended shall not be guilty of libel in the courts of this State, and no person whose driver's license is suspended under § 56-5-2990 shall have right of action in the courts of the State for libel suits against any person so publishing the name of such person who license has been suspended.

You have questioned whether such provision has been suspended by the federal Driver Privacy Protection Act (DPPA) as set forth at 18 U.S.C.A. §§ 2721-2725.

Pursuant to 18 U.S.C.A. § 2721,

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<sup>1</sup>Pursuant to such provision, "[t]he Department of Motor Vehicles shall suspend the driver's license of a person who is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56-5-2930...(driving under the influence)..., 56-5-2933...(driving with an unlawful alcohol concentration)..., or for the violation of another law or ordinance of this State or of a municipality of this State that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics...."

*Request Letter*

(a) In general-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

(1) personal information, as defined in 18 U.S.C. § 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section;....

(b) Permissible uses- Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety....

The Act states further that "[it] shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title." 18 U.S.C.A. § 2722(a). The DPPA defines the term "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." 18 U.S.C.A. § 2725(3).<sup>2</sup> The term "[m]otor vehicle record" is defined as "...any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." 18 U.S.C.A. § 2725(1).

The DPPA's ban on obtaining and disclosing personal information is subject to a number of statutory exceptions. "Permissible uses" of personal information are set forth in 18 U.S.C.A. § 2721(b) which states:

Permissible uses.--Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use 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.

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<sup>2</sup>Restrictions also exist as to the disclosure of "highly restricted personal information" pursuant to 18 U.S.C.A. § 2721(a)(2). Such term is defined by 18 U.S.C.A. § 2725(4) as "...an individual's photograph or image, social security number, medical or disability information;....

- (2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.
- (3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only--
  - (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
- (4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- (5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- (6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.
- (7) For use in providing notice to the owners of towed or impounded vehicles.
- (8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.
- (9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.
- (10) For use in connection with the operation of private toll transportation facilities.
- (11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.
- (12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.
- (13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
- (14) For any other 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.

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The DPPA 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) attorneys' fees and other litigation costs; and (4) preliminary and equitable relief.

As explained in Russell, et al. v. Choicepoint Services, Inc., et al., 302 F. Supp. 654, 659 (E.D. La. 2004),

State DMVs obtain personal information by requiring drivers and automobile owners to provide an address, telephone number, vehicle description, Social Security number, medical information, and photograph as a condition of obtaining a driver's license or registering an automobile...Largely in response to mounting public safety concerns over stalkers' and other criminals' access to the personal information maintained in state DMV records, Congress enacted the Driver's Privacy Protection Act of 1994...to regulate the disclosure of such information...The DPPA's regulatory scheme restricts the States' ability to disclose a driver's personal information without the driver's consent.

As stated in Hartman v. Department of Conservation and Natural Resources, 892 A.2d 897, 904 ((Pa. 2006),

Congress enacted the DPPA in response to mounting public safety concerns over the easy access to state motor vehicle records by stalkers and other criminals...The DPPA protects individual privacy rights while also authorizing access for legitimate purposes.

Such law was upheld against constitutional challenge in Reno v. Condon, 528 U.S. 141 (2000).

I am unaware of any cases or attorneys general opinions in other jurisdictions dealing with a question such as posed by you dealing with the release to the public of the names and addresses of all persons whose drivers' licenses are suspended under Section 56-5-2990 during the preceding

month. However, there are certain permissible uses of motor vehicle record information set forth by the DPPA. Pursuant to Section 2721(b), such information may be disclosed

...(1) For use 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...

(2) For use in connection with matters of motor vehicle or driver safety...

(14) For any other 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 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."

In an opinion dated October 19, 2001, the Texas Attorney General cited the "catch-all" provision of subsection (14) allowing the disclosure of information "[f]or any other use specifically authorized under the law of the State that holds the record, if the use is related to the operation of a motor vehicle or public safety" in concluding that legislation which permitted the use of magnetic strip information on drivers' licenses and identification cards for the purpose of complying with alcoholic beverage control rules did not violate the DPPA. The opinion stated that

[t]he laws related to the possession of alcohol by minors are to be found in Chapter 106 of the Alcoholic Beverage Code. The public policy which that Code articulates, and in light of which it is to be construed, is stated in section 1.03 of the Code:

This Code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose...

In light of the fact that preventing minors from acquiring alcoholic beverages is therefore a matter related to public safety, and the use of magnetic stripe information is specifically authorized by House Bill 3016 for that purpose, as well as for the other reasons articulated above, we conclude that House Bill 3016 does not fall afoul of the Federal Driver's Privacy Protection Act.

Several cases have construed the DPPA in various situations. In Hartman, supra, the publisher of a magazine for a snowmobile association sought records with names and addresses of registered snowmobile owners in the state. Citing the provision in subsection (b)(2) of Section 2721

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for disclosure “[f]or use in connection with matters of motor vehicle or driver safety”, the publisher contended he requested the information in order to promote snowmobile safety. However, the court concluded that “[t]he mere placement of safety information in one edition of the magazine cannot transform a commercial use into a “use in connection with matters of motor vehicle or driver safety.” 892 A.2d at 905.

In Wemhoff v. District of Columbia, 887 A.2d 1004 (D.C.Ct.App. 2005), the court dealt with a request by an attorney for the identity and addresses of motorists who received traffic violation tickets following their being photographed by a “red light camera” at a specific intersection. The court concluded that the records could not be accessed by reliance on the “investigation in anticipation of litigation” exception set forth in the DPPA at Section 2721(b)(4). The court referenced a test from an earlier decision which cited the need for actual or “likely” litigation rather than for the purpose of soliciting clients for “possible” litigation.

In Atlas Transit, Inc. v. Korte, 638 N.W.2d 625 (Wis. Ct. App. 2001), bus companies sought a declaratory judgment and injunction to prohibit a public school records custodian from releasing the names and commercial driver’s license numbers of their bus drivers to the public. In ruling against the bus companies the court noted that

[e]xceptions exist permitting disclosure in connection with matters of motor vehicle or driver safety (*see* 18 U.S.C. § 2721(b)) and use by an employer to obtain or verify information related to a holder of a commercial driver’s license (*see* 18 U.S.C. § 2721 (b)(9)). In sum, the DPPA does not prohibit...(the release)...of information on drivers collected by a private employer, and, even if it did, several exceptions appear to permit this type of use of the information.

638 N.W.2d at 633.

In Parus and Germantown Mutual Insurance Co. v. Kroepelin, 402 F.Supp.2d 999 (W.D.Wis. 2005), the court concluded that a police dispatcher did not violate the DPPA in relaying an individual’s motor vehicle record information to a game warden who had requested the information. It was referenced that Section 2721(b)(1) permits the disclosure of personal information “for use by any government agency, including any...law enforcement agency, in carrying out its functions.”

As set forth above, certain permissible uses of motor vehicle record information are set forth by the DPPA. Again, pursuant to Section 2721 (b), such information may be disclosed

...(1) For use 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...

(2) For use in connection with matters of motor vehicle or driver safety...

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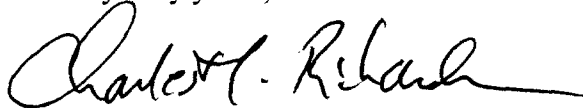
(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Also, Section 2725(3) provides that the "personal information" which may not be disclosed pursuant to Section 2721(a) "...does not include information on...driver's status." It could be asserted that "driver's status" would include the suspension status of a driver.

Arguably, these exceptions allowing for disclosure could be cited as a basis to authorize the release of names and addresses of persons whose drivers' licenses are suspended by your agency pursuant to Section 56-5-3000. However, I have been unable to locate any cases or decisions by other attorneys general that construe the DPPA in such a context. Moreover, as set forth above, the criminal and civil penalties for failing to comply with the prohibitions of the DPPA are quite severe. Also, this office has repeatedly indicated that we do not in an opinion construe federal law. See, e.g., Ops. Atty. Gen. dated May 8, 1989; June 5, 1974 and January 11, 1971. As a result, I would recommend that in order to resolve the question with finality, consideration be given to seeking a declaratory judgment action.

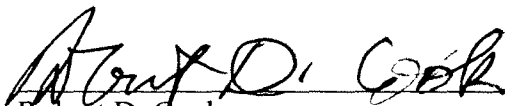
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General