DRIVER’S PRIVACY PROTECTION ACT (DPPA) UPDATE

Wisconsin Department of Justice
Office of the Attorney General
Office of Open Government
State Bar of Wisconsin
Public Records, Open Meetings Update
September 7, 2016
Driver’s Privacy Protection Act (DPPA)

- Federal statute enacted in 1994
- Purpose: limit release of an individual’s personal information contained in driver’s license record
- Concerns about threats from stalkers and criminals and states’ practice of selling personal information to businesses
DPPA, continued

- Law prohibits release of certain types of information

  - Personal information

    - Individual’s photograph, SSN, driver ID number, name, address, telephone number, medical or disability information

  - Highly restricted personal information

    - Individual’s photo or image, SSN, medical or disability information
DPPA Exceptions

- 14 permissible uses (exceptions)
- Not all apply to highly restricted personal information
- Notable exceptions:
  - “Agency functions” exception – 18 U.S.C. § 2721(b)(1)
  - “State law” exception – 18 U.S.C. § 2721(b)(14)
DPPA Enforcement

- Penalties
  - Criminal fine for knowingly violating
  - State DMV’s substantial noncompliance: civil penalty of not more than $5,000 per day
DPPA Enforcement, continued

- Private right of action for any individual whose personal information is unlawfully disclosed

- Remedies:
  - Actual damages not less than $2,500
  - Punitive damages for willful and reckless violations
  - Attorney fees and costs
  - Other preliminary and equitable relief
Wisconsin Public Records Law

- Wis. Stat. §§ 19.31 to 19.39
Presumption

The public records law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”

— Wis. Stat. § 19.31
DPPA Related Considerations

- Requester has the right to inspect any record except as otherwise provide by law – Wis. Stat. § 19.35(1)(a)

- Any record specifically exempt from disclosure by state or federal law is exempt from disclosure – Wis. Stat. § 19.36(1)

- For records containing both disclosable information and information that cannot be disclosed, provide the former and redact the latter – Wis. Stat. § 19.35(6)
Senne v. Village of Palatine

- 695 F.3d 597 (7th Cir. 2012)
- Parking tickets containing personal information obtained from DMV records were placed on windshields
- Held: parking tickets were disclosures under DPPA
  - Each piece of disclosed information must effectuate a purpose identified in one of the DPPA exceptions
New Richmond News v. City of New Richmond

- 2016 WI App 43, 881 N.W.2d 339
- Newspaper requested accident reports and incident reports from city police department
- Relying on Senne, PD provided redacted records citing DPPA
- Newspaper filed mandamus action
Court of Appeals held:

- **Accident reports**: permitted to be released unredacted

- **Incident reports**: release of DMV information prohibited unless DPPA exception applies
  - Compliance with public records request not a "function"
  - Remanded to determine whether disclosure served any other PD function
New Richmond News, continued

- Court of Appeals held:
  - Information verified using DMV records is not protected by DPPA
    - “Obtained” v. “Verified”
  - DPPA permits publication of identical information if information is obtained from a source other than DMV records
  - Remanded to determine if redacted information was obtained from DMV records, and if so, whether its disclosure served an agency function other than compliance with public records law
Moving Forward

- Neither party plans to appeal *New Richmond News*
- The Court of Appeals decision creates new questions for authorities and records custodians to address
Accident Reports

- Personal information obtained from DMV records may be disclosed without redaction

- Redactions pursuant to other statutes or balancing test permissible
  - Court left open this possibility when it did not address the issue
  - Case-by-case basis; presumption of complete public access
Incident Reports

- Personal information obtained from DMV records may not be disclosed unless a DPPA exception applies
- “Mere compliance” with the public records law is not considered an agency function
Information Verified by DMV Records

- Identical information prohibited from disclosure if obtained from DMV records may be disclosed if obtained from other sources.
- Presents the problem of determining how information was obtained.
- Automatic population of documents using personal information obtained from DMV records.
- Information obtained from a driver’s license.
Unanswered Questions

- Court decisions
- Legislative action
Further Information

- Consult legal counsel
- Download DOJ Compliance Guides and other resources at https://www.doj.state.wi.us/office-open-government/office-open-government
- Call the Office of Open Government: (608) 267-2220
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