

# 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



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# Driver's Privacy Protection Act (DPPA)

- 18 U.S.C. § 2721 et seq.
- 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



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# 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



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# 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)



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# DPPA Enforcement

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



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# 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



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# Wisconsin Public Records Law

- Wis. Stat. §§ 19.31 to 19.39



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# 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





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# 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)



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# *Senne v. Village of Palatine*

- 695 F.3d 597 (7<sup>th</sup> 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



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# *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



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# *New Richmond News, continued*

- Court of Appeals held:
  - Accident reports: permitted to be released unredacted
    - DPPA exception allows. See 18 U.S.C. § 2721(b)(14).
  - 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



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# *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



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# 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



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# Accident Reports

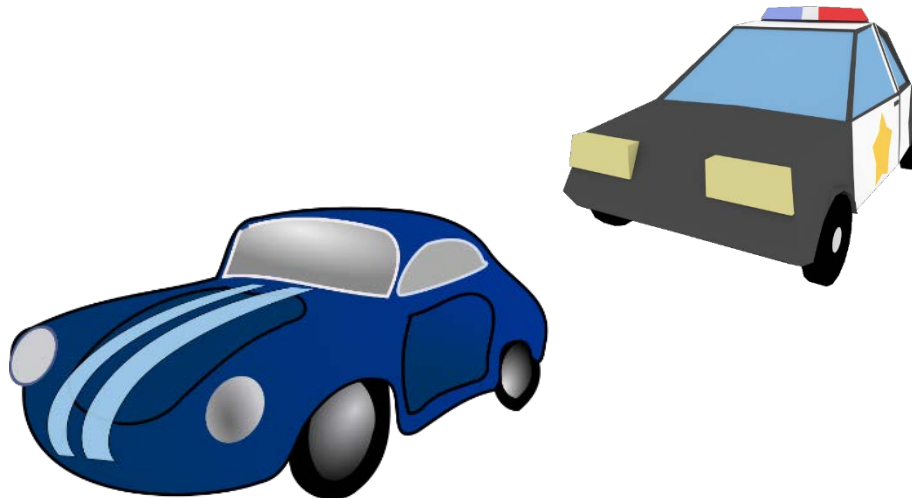
- Personal information obtained from DMV records may be disclosed without redaction
- Redactions pursuant to other statutes or balancing test permissible
  - Court left open this possibility when it did not address the issue
  - Case-by-case basis; presumption of complete public access



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# 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





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# Information Verified by DMV Records

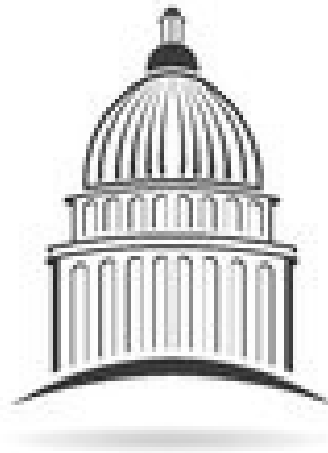
- Identical information prohibited from disclosure if obtained from DMV records may be disclosed if obtained from other sources
- Presents the problem of determining how information was obtained
- Automatic population of documents using personal information obtained from DMV records
- Information obtained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



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# Unanswered Questions

- Court decisions
- Legislative action



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# 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
- Write to: Paul M. Ferguson, Assistant Attorney General  
Office of Open Government  
Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857



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