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COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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And

Ms. Melissa Ashburn
Municipal Technical Advisory Service (MTAS)
120 Conference Center
Knoxville, Tennessee 37996-4105

March 6, 2009

Captain Ziegler and Ms. Ashburn:

You both requested an opinion from this Office that addresses the following issue:

Does any provision within state law require driver identification numbers be redacted prior to inspection and/or duplication of an accident or incident report prepared by a local law enforcement agency when the driver identification number is obtained from the Department of Safety's motor vehicle database?

It is the opinion of this Office that various provisions within both state and federal law require that certain personal information, which includes but is not limited to driver identification numbers, be maintained as confidential when the information is obtained from the Department of Safety's motor vehicle database.

I. The Driver's Privacy Protection Act of 1994

In 1994, the federal government passed the "Driver's Privacy Protection Act of 1994" (hereinafter referred to as "DPPA"). The DPPA provides that a state department of motor vehicles and the officers, employees, and contractors thereof are prohibited from knowingly disclosing personal information about a person that is obtained by the

department in connection with a motor vehicle record. 18 U.S.C. § 2721(a)(2007). “Motor 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. § 2725(1)(2007). Additionally, “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. § 2725(3)(2007).

While generally there is a prohibition on the release of personal information obtained by a state department of motor vehicles in connection with a motor vehicle record, the DPPA does enumerate limited circumstances in which personal information within motor vehicle records is either required or permitted to be disclosed. 18 U.S.C. § 2721(b)(1)(2007) allows for the disclosure of personal information to any governmental entity, which includes a local law enforcement agency, when the governmental entity is using the personal information to carry out its functions. The DPPA then provides the circumstances in which an “authorized recipient of personal information” is permitted to “resell or redisclose” personal information legally obtained from a state department of motor vehicles through use of a motor vehicle record. 18 U.S.C. § 2721(c)(2007).

While the DPPA enumerates a number of situations where an “authorized recipient of personal information” such as a local law enforcement agency is permitted to resell or redisclose personal information, redisclosure of personal information such as a driver identification number on an accident or incident report that has been requested pursuant to the TPRA is not authorized. Therefore, it is the opinion of this Office that the DPPA requires local law enforcement agencies to redact any “personal information”, which includes driver identification numbers, from an accident or incident report prior to the release of such a report for public inspection and/or duplication.

II. The Uniform Motor Vehicle Records Disclosure Act

There are two separate provisions within Tennessee Code Annotated that address the confidentiality of certain personal information, such as driver identification numbers, obtained by certain governmental departments and agents thereof in connection with a motor vehicle record. Both provisions were enacted in order to implement the DDPA and are included in the “Uniform Motor Vehicle Records Disclosure Act” (hereinafter referred to as “the Act”). The first provision is found at Tenn. Code Ann. Section 10-7-504(a)(12) and says the following:

Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with the provisions of title 55, chapter 25.

The second provision, Tenn. Code Ann. Section 55-25-104, which provides the basis for the above cited statutory provision, says in part:

Notwithstanding any law to the contrary, except as provided in 55-25-105 – 55-25-107 and 55-25-108 (repealed), the department, and any officer, employee, agent or contractor thereof, shall not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

“Department” is defined in Tenn. Code Ann. Section 55-25-103(1) as:

The Department of Safety, the Department of Revenue and the County Clerk’s office when acting as an agent of such departments, or the duly authorized agents or contractors thereof, responsible to compile and maintain motor vehicle records.

“Personal information” is defined in Tenn. Code Ann. Section 55-25-103(8) as:

Information that identifies a person, including an individual’s photograph, or computerized image, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment related violations, and driver’s license or registration status.

“Motor vehicle record” is defined in Tenn. Code Ann. Section 55-25-103(6) as:

Any records that pertain to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by a Department of Motor Vehicles, or other state or local agency authorized to issue any such forms of credentials.

Much like the federal law, the Act begins with the general premise that personal information may not be released at all, but later enumerates a number of circumstances where disclosure is either mandatory or permissive. Tenn. Code Ann. Section 55-25-107(a)(1) and Tenn. Code Ann. Section 55-25-107(b). Additionally, Tenn. Code Ann. Section 55-25-107(c) enumerates those circumstances when an “authorized recipient of personal information,” which includes any entity or individual to whom the “department” has legally disclosed personal information, is authorized to “resell or redisclose” personal information.

A local law enforcement agency constitutes an “authorized recipient of personal information,” when the agency uses the personal information obtained, such as driver identification numbers, to carry out its function. Tenn. Code Ann. Section 55-25-107(b)(1). As an “authorized recipient,” a local law enforcement agency would only be

permitted to resell or redisclose the same driver identification numbers it obtained from the “department” in those limited circumstances enumerated in the statute. *See* Tenn. Code Ann. Section 55-25-107(b)(1)-(10) and (13)-(14). Responding to a public records request is not one of the enumerated circumstances where disclosure of personal information is permitted. As such, it is the opinion of this Office that the Act requires local law enforcement agencies to redact driver identification numbers, as well as any other information that constitutes “personal information, prior to release of an accident or incident report for public inspection and/or duplication, when the driver identification numbers have been obtained by the “department” in connection with a motor vehicle record.

Conclusion

For the above mentioned reasons, it is the opinion of this Office that local law enforcement agencies are required to redact all “personal information”, except for information regarding vehicular accidents, driver’s license or registration status, and driving violations from accident or incident reports prior to inspection and/or duplications of the reports, when the “personal information” is obtained by the “department” in connection with a “motor vehicle record.” As such, in a situation where a local law enforcement officer responding to an automobile accident obtains a driver identification number for one of the drivers from the Department of Safety’s database and writes that driver identification number on an accident report, the driver identification number is required to be redacted prior to inspection and/or duplication of that report.

Please feel free to call either myself or Ann V. Butterworth at (615) 401-7891 if you have any further questions.

Elisha D. Hodge
Open Records Specialist
Office of Open Records Counsel