

Records, motor vehicle accident reports

Number: INFORMAL

Date: September 18, 1997

Subject:
Records, motor vehicle accident reports

The Honorable Sally A. Heyman
Representative, District 105
17101 Northeast 19th Avenue
North Miami Beach, Florida 33162

Dear Representative Heyman:

You ask whether Chapter 97-185, Laws of Florida, limits the disclosure of personal information, contained in an accident report, that a law enforcement officer has obtained from a driver license. You also inquire whether section 119.105, Florida Statutes, prohibits persons obtaining police motor vehicle accident reports for the purpose of contacting the drivers and occupants of such motor vehicles for commercial solicitation.

Based upon the following discussion, I am of the opinion that Chapter 97-185, Laws of Florida, does not limit the disclosure of personal information, contained in an accident report, that a law enforcement officer has obtained from a driver license received from the driver. Section 119.105, Florida Statutes, prohibits persons obtaining police motor vehicle accident reports for the purpose of contacting the drivers and occupants of such motor vehicles for commercial solicitation, and makes a willful and knowing violation of the statute a misdemeanor of the first degree. The constitutionality of the statute has been challenged and is currently under review by the federal court.

As part of the Violent Crime Control and Law Enforcement Act of 1994, Congress enacted the Driver's Privacy Protection Act,[1] which prohibits the release of personal information contained in state motor vehicle records with certain enumerated exceptions.[2] The act requires states to comply with its provisions by September 13, 1997, and contains penalty provisions, including imposition of a civil penalty of up to \$5,000 per day against a state department of motor vehicles that has a policy or practice of substantial noncompliance.[3]

While the act generally prohibits the release of personal information, subsection (b) permits the disclosure of personal information for use by any government agency, including any court or law enforcement agency, in carrying out its functions and for use in connection with matters of motor vehicle or driver safety and theft.[4] The act permits an authorized recipient of personal information to redisclose the information as prescribed therein.[5]

In response to the federal act, the Florida Legislature enacted Chapter 97-185, Laws of Florida. The chapter adds paragraph (bb) to section 119.07(3), Florida Statutes, which permits individuals to request that certain personal information contained in their motor vehicle records

be exempt from public disclosure.

"Personal information" includes, but is not limited to, social security number, driver identification number, name, address, telephone number, and medical or disability information. It does not, however, include information relating to vehicular crashes, driving violations, and driver's status. "Motor vehicle record" is defined, for purposes of section 119.07(3)(bb), Florida Statutes, to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

Even when an individual has requested that personal information in their motor vehicle records be exempt from disclosure, section 119.07(3)(bb), Florida Statutes, permits the release of such information for certain purposes. Pursuant to section 119.07(3)(bb)1. and 2., Florida Statutes, such information may be released by the department:

"1. For use in connection with matters of motor vehicle or driver safety and theft

2. 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."

The rules of the Department of Highway Safety and Motor Vehicles provide, among other things, that the department, prior to the disclosure of personal information, obtain "reasonable assurance" of the requestor's identity, that the use will be only as authorized, or that the consent of the person who is the subject of the information has been obtained.

Both the federal and state acts address the release of personal information from motor vehicle records by state motor vehicle departments. Chapter 97-185, Laws of Florida, thus restricts the release of personal information by the Department of Highway Safety and Motor Vehicles.

During an investigation of a traffic accident, however, the information obtained from a driver license is usually released not by the Department of Highway Safety and Motor Vehicles but by the driver(s) involved in the accident. Since Chapter 97-185, Laws of Florida, relates to the release of personal information by the department, the release of such information by drivers in presenting their licenses to the police officer investigating the traffic accident would not appear to be within the contemplation of the statute.[6] Thus, the disclosure of personal information, contained in an accident report, that a law enforcement officer obtained from a driver license received from the driver would not appear to be prohibited by Chapter 97-185, Laws of Florida.

You also inquire about the commercial use of police records in light of section 119.105, Florida Statutes, which states:

"Police reports are public records except as otherwise made exempt or confidential by general or special law. Every person is allowed to examine nonexempt or nonconfidential police reports. *No person who inspects or copies police reports for the purpose of obtaining the names and addresses of the victims of crimes or accidents shall use any information contained therein for any commercial solicitation of the victims or relatives of the victims of the reported crimes or*

accidents. Nothing herein shall prohibit the publication of such information by any news media or the use of such information for any other data collection or analysis purposes." (e.s.)

In addition, section 316.066(4), Florida Statutes, prohibits the use of accident reports for commercial solicitation purposes.[7]

Thus, the statutes prohibit any person inspecting or copying an accident report from using that report for commercial solicitation. While section 119.10(2), Florida Statutes, provides that any person who willfully and knowingly violates any provision of Chapter 119, Florida Statutes, is guilty of a misdemeanor of the first degree, it should be noted that the constitutionality of both section 119.105 and section 316.066, Florida Statutes, have been challenged and are currently under review by a federal court.[8]

While nothing in Chapter 119, Florida Statutes, permits a public agency to refuse access to public records on the suspicion that the requestor may use the record inappropriately, this office has stated that a public agency may provide a copy of section 119.105, Florida Statutes, in order to inform the requestor of the prohibition against using information contained in a crime and police report for commercial solicitation, and the criminal consequences of willfully and knowingly violating the statute.[9] This could serve to put the requestor of such documents on notice as to the limitations and prohibitions that are currently contained in the Public Records Law.

I trust that the above comments may be of assistance to you.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 300002, Pub. L. 103-322, enacting the chapter; *and* see s. 300001 of Pub. L. 103-322, stating that the title enacting the chapter may be cited as the "Driver's Privacy Protection Act of 1994."

[2] See 18 U.S.C. s. 2721, prohibiting the release and use of certain personal information from state motor vehicle records. *And* see 18 U.S.C. s. 2725(1) and (3), respectively providing:

"(1) "motor vehicle record" means 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;

* * *

(3) "personal information" means 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."

[3] See s. 300003, Pub. L. 103-322, providing that the amendments made by s. 300002 shall become effective on the date that is three years after the date of enactment of this act (September 13, 1994). *And* see 18 U.S.C. ss. 2723 and 2724, providing penalties and fines.

[4] See 18 U.S.C. s. 2721(b)(1) and (2).

[5] See 18 U.S.C. s. 2721(c) stating:

"An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request."

And see 18 U.S.C. s. 2721(b)(11), authorizing the release of such information for any use if the motor vehicle department has provided in a clear and conspicuous manner on its forms that the personal information may be disclosed to any person, and has provided an opportunity to prohibit such disclosures; 18 U.S.C. s. 2721(b)(12), authorizing bulk distribution for surveys, marketing or solicitations if the department has implemented methods and procedures to ensure that individuals are provided with an opportunity to prohibit such uses, and that surveys, marketing, and solicitations will not be directed at those individuals who have so requested.

[6] The staff analysis discussing the impact of Chapter 97-185, Laws of Florida, states that while the bill will have a fiscal impact on state government, it has no fiscal impact on local government. See House of Representatives, as revised by the Committee on Governmental Operations, Final Bill Research & Economic Impact Statement on CS/HB 95 (as passed by the Legislature, Ch. 97-185, Laws of Florida), dated June 17, 1997. Had the Legislature intended Chapter 97-185 to require local law enforcement agencies to delete certain information contained in their traffic incident report records, such an impact should have been noted.

[7] *And* see s. 316.650(11), Fla. Stat. (1996 Supp.), which provides that driver information contained in traffic citations which includes, but is not limited to, the accused person's name and address, shall not be used for commercial solicitation purposes.

[8] See *Griffin v. Golden*, Case No. 397CV 284RV (N.D. Fla., filed June 1997). *Cf. Babkes v. Satz*, 944 F. Supp. 909 (S.D. Fla., 1996), in which the court granted a permanent injunction against the state seeking to enforce the provisions of s. 316.650(11), Fla. Stat. The court held that the statute restricting commercial use of names and addresses on traffic citations violated First Amendment commercial speech rights of attorneys who sought to use names and

addresses in truthful, nonmisleading direct mail advertisements designed to solicit clients.

[9] See Inf. Op. to Mark Zimmerman, March 5, 1993.