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Civil Liability Under the Driver's Privacy Protection Act (DPPA)

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❖ Introduction

The Driver's Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. Sec. 2721-2725, was enacted in 1994, and governs the privacy and disclosure of personal information gathered by state Departments of Motor Vehicles. Ills aimed at are stalking, domestic violence, identity theft, and the use of driver's license data generally for non-law enforcement purposes. This brief article examines what the statute provides and some cases in which civil liability was at issue for either individuals or municipalities. At the end of the article is a list of useful and relevant resources and references.

❖ Coverage of Statute

In one of the early cases interpreting the statute, a federal court held that the DPPA creates a private cause of action imposing vicarious liability on municipalities if employees or agents violate it with "apparent authority." Possible plaintiffs include not only the driver, but also other family members sharing the same address who might be subjected to stalking or harassment.

In *Margan v. Niles*, #00-cv-1201, 250 F. Supp. 2d 63 (N.D.N.Y.), a federal trial court held that DPPA, a federal statute designed to protect the privacy of driver's license records for the purpose of deterring "stalking" and harassment creates a

private cause of action for damages, and that, further, a municipality may be held vicariously liable if an employee or agent, acting with at least "apparent authority" violates the provisions of the statute. No showing is required of an official municipal policy or custom.

The statute involved is the Driver's Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. § 2721, which provides, in pertinent part:

> 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; or
>
> (2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9):

The statute was enacted in a response to a 1989 murder of an actress, Rebecca Schaefer. In that case, an obsessed fan allegedly hired a private investigator to obtain the actresses license plate number which the investigator subsequently used to get the actresses' home address, which he provided to his client, who allegedly then killed her.

In the immediate case, investigators for a supermarket began watching an employee who was suspected of faking injuries for purposes of a workers' compensation claim. The employee and a friend obtained the motor vehicle license plate numbers of the investigators and then asked a police officer employed by a local municipality to obtain information about the investigators and about a supermarket employee assigned to administer the compensation claim.

The employee or their friend allegedly used that information to harass or threaten the individuals whose home addresses were obtained, videotaping the family of one of the individuals, including her children, delivering the videotape together with a threatening note, and engaging in other threatening behavior and/or acts of vandalism.

Both the employee and their friend subsequently pled guilty to criminal conspiracy to commit extortion charges in connection with the harassment.

The victims of the harassment filed a federal lawsuit asserting claims against the officer and the city under the statute. The municipality moved to dismiss, arguing

that there was no showing of an official municipal policy or custom, and that it could not simply be held vicariously liable for the alleged actions of its officer. It also asserted that the provisions of the statute and particularly those of 18 U.S.C. Sec. 2724, creating a private cause of action for damages, applied only to the persons whose driver's license records were disclosed, and not to their spouses or children because these are the only plaintiffs whose personal information may have been improperly obtained from motor vehicle records. The plaintiffs argued that the wording of the statute is broad enough to include all persons whose information may have been disclosed as a result of an improper use of motor vehicle records:

> (a) Cause of Action. - A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.
>
> (b) Remedies. - The court may award -
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> (1) actual damages, but not less than liquidated damages in the amount of $2,500;
>
> (2) punitive damages upon proof of willful or reckless disregard of the law;
>
> (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
>
> (4) such other preliminary and equitable relief as the court determines to be appropriate

The court rejected all these arguments. It noted that information in a motor vehicle record "may pertain to more than just the motor vehicle operator. For example, the title to a motor vehicle that is jointly owned by two or more people (e.g. a husband and wife or three friends) will contain information (such as names) pertaining to all those people. Similarly, the registration of a motor vehicle registered to one spouse ordinarily will contain information (such as address and telephone number) regarding the other spouse."

But additionally, the purpose of the legislation was to protect not only drivers, but other persons who might suffer harm as a result of the release of the information, including children. While the statute does place restrictions on the commercial sale of driver's license information, this was not the main focus of the intent of Congress in enacting the provision--rather it was to fight particular types of crime, such as stalking and harassment.

In the instance of one of the families involved in the case, they could not maintain a claim under the statute, however, as it appeared that their home address was obtained through other means than motor vehicle records.

The federal court also ruled that no showing was required of an official municipal policy or custom, and that a municipality can be held vicariously liable for the actions of its employees or agents acting with at least "apparent authority." Such vicarious liability, the court reasoned, would impose an incentive on an employer to take steps to adopt "appropriate policies and procedures to prevent the misuse of motor vehicle records, thereby furthering the DPPA's goals of protecting individuals' personal information found in motor vehicle records."

Because there is nothing in the DPPA suggesting that it was not intended to impose vicarious liability and "application of the apparent authority doctrine advances the [DPPA's] goals and produces no inconsistencies with other [DPPA] provisions, ... a theory of [vicarious] liability is an appropriately operative theory of liability under the statute."

The court acknowledged that "Arguably, there would be an inconsistency in imposing vicarious liability upon states and state agencies because they are exempted from civil liability under 18 U.S.C. § 2724.That issue, however, need not be addressed in this case. There are no inconsistencies with imposing vicarious liability upon municipalities." A state department of motor vehicles may, however, be subject to a civil penalty imposed by the Attorney General if it has "a policy or practice of substantial noncompliance with this chapter." 18 U.S.C. § 2723(b). This differential treatment of states and state departments of motor vehicles provides no basis upon which to conclude that Congress intended to treat municipalities different than other "persons," the court reasoned.

Subsequently, there was a $325,000 settlement reached in this, the first case brought under federal statute protecting the privacy of driver's license records.

The permissible disclosures of driver's license information under the statute are:

1. For any government agency to carry out its functions
2. For use in connection with "matters of motor vehicle or driver safety and theft", including
    1. disclosure "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"
    2. removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor

Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act

3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only to:
    1. verify the accuracy of personal information
    2. correct information
4. For use in connection with any matter before a court or arbitration proceeding.
5. For producing statistical reports and other research, provided that personal information is not published.
6. For use by insurance companies.
7. For providing notice to owners of towed vehicles.
8. For use by licensed private investigation agencies, for a permitted DPPA use.
9. For use by employers to verify commercial driver information as required by U.S. Code Title 49, subtitle VI, chapter 313.
10. For use by private toll transportation facilities.
11. For response to requests from motor vehicle departments.
12. For the bulk distribution of surveys, marketing materials, or solicitations (opt-in only).
13. When written consent of the individual is provided.
14. For other uses specifically authorized by state laws.

If not specified in the statute as a legitimate use, other uses and purposes may lead to liability. The act also makes it illegal to obtain drivers' information for unlawful purposes or to make false representations to obtain such information. The act establishes criminal fines for noncompliance, and establishes a civil cause of action for drivers against those who unlawfully obtain their information.

The statute's constitutionality was upheld by the U.S. Supreme Court against a Tenth Amendment challenge in *Reno v. Condon*, #98-1464, 528 U.S. 141 (2000). In *Maracich v. Spears*, #12-24, 570 U.S. 48 (2013), the U.S. Supreme Court ruled that the Act's litigation exception did not extend to attorneys' solicitation of new clients.

❖ Individual Liability

Courts have addressed in a number of cases the parameters of individual

liability under the DPPA. In *Collier v. Dickinson*, #06-12614, 477 F.3d 1306 (11th Cir. 2007), plaintiffs who claimed that Florida officials sold personal information from their driver's licenses and/or vehicle registrations to mass marketers failed to establish a claim for violation of their constitutional rights to privacy, but they could pursue a claim under the federal Driver Privacy Protection Act (DPPA), 18 U.S.C. Sec. 2721-2725 and 42 U.S.C. Sec. 1983. The protections of the DPPA as to the privacy of driver's license data were specific enough to clearly establish what conduct was prohibited and thereby overcome any defense of qualified immunity.

Lambert v. Hartman, #07-3154, 517 F.3d 433 (6th Cir. 2008) is another case showing that what is protected under DPPA is not adequate, when the statute is not invoked, to provide constitutional rights of privacy leading to liability. In this case, a motorist who was given a speeding ticket complained that she was subjected to "identity theft" after the local county clerk published the ticket, containing personal information, including her Social Security number, on the clerk's website. A federal appeals court found that any alleged privacy interest did not involve a fundamental right and was not sufficient to establish a violation of her 14th Amendment due process rights from the publication.

Similarly, in *Luparello v. Incorporated Village of Garden City*, 290 F. Supp. 2d 341 (E.D.N.Y. 2003), a motorist asserted a claim for violation of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, after a police officer who pulled her over obtained private information from vehicle licensing records concerning her and her husband, allegedly without a permissible purpose for doing so, since he had no probable cause or reasonable suspicion to "run the plate" of the vehicle.

The impermissible purpose must be specifically pled by the plaintiff. In *Kampschroer v. Anoka County*, #14-3527, 840 F.3d 961 (8th Cir. 2016), a former major league baseball player sued a county and other defendants after an audit revealed that officers from over 30 departments had accessed his driver's license information more than 125 times. He claimed that this violated his rights under DPPA. Claims against all but two municipalities were not timely. A federal appeals court upheld the dismissal of the remaining claims because the plaintiff failed to plead sufficient facts to show that the defendants accessed his information for an impermissible purpose.

What about information placed on parking tickets? In *Senne v. Village of Palatine*, #13-3671, 784 F.3d 444 (7th Cir. 2015).In this case, after a man parked his car on the street outside his suburban home in violation of an ordinance, an officer placed a parking ticket face down under his windshield wiper. The ticket included the man's name, birth date, sex, weight, height, driver's license number, an outdated address, and the vehicle identification number and description of his car. He then

filed an attempted class action lawsuit under the federal Driver's Privacy Protection Act, forbidding the disclosure of personal information obtained in connection with motor vehicle records except for specified uses "in connection with any civil, criminal, administrative, or arbitral proceeding" and "use by any government agency, including any court or law enforcement agency, in carrying out its functions."

Upholding the rejection of the privacy claim, a federal appeals court noted that there was no evidence that anyone had ever taken a parking ticket off a car windshield in the suburb in question and used the personal information on the ticket for any purpose. It stated that, had the municipality made all the information present on the ticket accessible to the public on the Internet or placed "highly sensitive" information, such as the motorist's Social Security number, on the ticket, there might have been a greater risk of a "nontrivial" invasion of privacy that outweighed any benefit to law enforcement.

Defenses available to DPPA liability include a statute of limitations, which is an affirmative defense that must be raised or it is waived. In *Collins v. Village of Palatine*, #16-3395, 875 F.3d 839 (7th Cir. 2017), a village police officer issued a motorist a parking ticket in 2007, placing the ticket under his car's wiper blades. The ticket listed his name, address, driver's license number, date of birth, sex, height, and weight. The motorist claimed that the display of his personal information violated the Driver's Privacy Protection Act (DPPA), 18 U.S.C. 272. A federal appeals court determined that the four-year statute of limitations of the Driver's Privacy Protection Act expired on July 10, 2011, long before the plaintiff filed this suit.

Efforts to cover up DPPA violations may come into evidence. In *Deicher v. Evansville,* #07-2092, 545 F.3d 537 (7th Cir. 2008), cert denied, *City of Evansville v. Deicher*, #08-796, 555 U.S. 1173 (2009), a husband and wife claimed that a city police officer violated the Driver's Privacy Protection Act (DPPA) by disclosing the wife's address to her former husband, against whom she had obtained a restraining order. The jury returned a verdict for the defendants, but a federal appeals court found that the plaintiffs were entitled to a new trial because the trial court abused its discretion by failing to provide the jury with the notice of claim form which was in evidence and "central" to the plaintiffs' argument that the officer had falsified his report on an incident occurring after the notice of claim in order to create a potential defense to the lawsuit.

❖ Municipal Liability

While municipalities can be liable under DPPA, defenses may be raised, including proactive efforts by a municipality to limit unauthorized access to information. In *Loeffler v. City of Duluth*, #17-1377, 2018 U.S. App. Lexis 17825 (8th Cir.), a female motorist sued a female police officer, several other officers, various officials and a city for alleged unauthorized access to her driver's license information in violation of the Driver's Privacy Protection Act. A federal appeals court upheld the dismissal of the claims. Claims against the female officer were untimely under the statute of limitations. Municipal liability claims against the city were not established because she failed to allege sufficient facts supporting an inference that the city knowingly allowed the officer to access the database for any reason other than her official duties; and plaintiff failed to preserve any vicarious liability claim.

❖ Resources

The following are some useful resources related to the subject of this article.

- Drivers' Privacy Protection Act, 18 U.S.C. Secs. 2721-2725.
- Drivers' Privacy Protection Act. Wikipedia article.
- Privacy. AELE Civil Case Summaries.
- The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record, EPIC – Electronic Privacy Information Center.

❖ Relevant Monthly Law Journal Articles

- Civil Liability and Dead Bodies, 2014 (7) AELE Mo. L. J. 101.

❖ References: (*Chronological*)

1. Know about Driver's Privacy Protection Act, Ohio State Bar Association (April 29, 2015).

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