



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **DRIVER'S PRIVACY PROTECTION ACT (DPPA)**

NUMBER: 10.04
ISSUED: 06/01/2015

SCOPE: All Sworn Personnel
DISTRIBUTION: Policy & Procedure Manual

EFFECTIVE: 07/15/2015

REFERENCE: Refer to Section III. below

RESCINDS
 AMENDS
WILEAG 4TH EDITION
STANDARDS: 10.2.1

INDEX AS: Driver's Privacy Protection Act
DPPA
Open Records
Release of Information

PURPOSE: The purpose of this policy is to establish guidelines for the release of records derived from the Department of Motor Vehicles to third parties. The Driver's Privacy Protection Act (hereinafter "DPPA") was created to protect people from the personal dangers resulting from the disclosure of sensitive personal information and highly restricted personal information by governmental entities to third parties.

Further, the disclosure of this type of personal information amounts to an unwarranted invasion of the individual's privacy and can have a chilling effect on the public's willingness to communicate with government officials.

The DPPA is to be applied in conjunction with the Wisconsin Open Records Law, which presumes complete public access to public records consistent with the conduct of governmental business unless denial of such access is in the public interest or required by the DPPA.

The further purpose of this policy is to provide guidance as to what personal data should be redacted from records derived from the Department of Motor Vehicle while still providing the public with all relevant information needed for public safety purposes without compromising the personal safety/privacy protection interests that lie at the heart of the DPPA.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. ADMINISTRATIVE RULES OF ACCESS
- III. AUTHORITIES
- IV. DEFINITIONS UNDER THE DRIVER'S PRIVACY PROTECTION ACT (DPPA)
- V. LIMITATIONS ON DISCLOSURE OF INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES
- VI. PERMISSIBLE DISCLOSURE OF INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES
- VII. PERMISSIBLE DISCLOSURE OF PERSONAL INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES
- VIII. RELEASE OF RECORDS DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES

I. POLICY

- A. The Elkhart Lake Police Department adopts the policy underlying the DPPA which was enacted in 1994 and codified at 18 U.S.C. § 2721, et. seq. The DPPA was enacted to prohibit states' departments of motor vehicles and any officer, employee or contractor thereof from knowingly disclosing or making available personal information about any individual obtained in connection with a motor vehicle record without the person's express consent, except as specifically allowed in relevant exceptions outlined in the DPPA.
- B. The Elkhart Lake Police Department adopts the Declaration of Policy found in Wisconsin Statute § 19.31, which construes the Wisconsin Open Records Law with a presumption of complete public access to public records consistent with the conduct of governmental business, unless denial of such access is in the public interest and is not violative of the Driver's Privacy Protection Act.

II. ADMINISTRATIVE RULES OF ACCESS

- A. The Chief of Police is the official "custodian" of the records of the Police Department. The Chief may appoint subordinate command officer(s) to perform the role of "deputy custodian(s)". Other Department members may be appointed by the Chief as designees.

III. AUTHORITIES

A. Wisconsin State Statutes:

- 19.21(1) Custody of Records
- 19.33 Legal Custodians
- 19.34 Procedural Information
- 19.35 Access to Records; fees
- 19.36 Limitations upon Access and Withholding
- 19.365 Rights of Data Subject to Challenge
- 19.85 Exemptions to the Open Meetings Law
- 48.396 Confidentiality of Children's Records
- 51.30 Medical Treatment Records
- 146.82 Confidentiality of Patient Health Care Records
- 938.396 Confidentiality of Juvenile Records
- 950.01 Legislative Intent/Rights of Victims and Witnesses of Crime

B. Federal Case Law:

Senne v. City of Palatine, Illinois, 695 F.3d 597 (7th Cir. 2012). Maracich, et al. v. Spears, et al., U.S. Supreme Ct. Dkt. No. 12-25.

C. Other Authorities:

- 18 U.S.C. § 2721, et. seq. Federal Driver's Privacy Protection Act
- 18 U.S.C. § 2725, et. seq. Federal Driver's Privacy Protection Act – Definitions
- 42 U.S.C. § 1320d, et. seq. Health Insurance Portability and Accountability Act (HIPAA)

IV. DEFINITIONS UNDER THE DRIVER'S PRIVACY PROTECTION ACT (DPPA)

- A. **"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;
- B. **"Person"** means an individual, organization or entity, but does not include a state or agency thereof;
- C. **"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;
- D. **"Highly Restricted Personal Information"** means an individual's photograph or image, social security number, medical or disability information; and

- E. **“Express Consent”** means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106-229.

V. LIMITATIONS ON DISCLOSURE OF INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES

- A. Information obtained through the Department of Motor Vehicles that should not be disclosed or otherwise made available to non-excepted third parties. The following personal information should be redacted from any official records prior to release to non-excepted third parties.
1. Name;
 2. Addresses, including home addresses;
 3. Telephone numbers (cell or hard line);
 4. Dates of birth;
 5. Driver’s license numbers and driver’s ID numbers;
 6. Any record identifying any individual when that identification would invade the person’s privacy and discourage full cooperation in reporting accidents;
 7. An individual’s photograph;
 8. An individual’s social security number;
 9. 9-digit zip code (but not the 5-digit zip code);
 10. Medical or disability information;
 11. Any information that would compromise the safety of victims or witnesses of a crime. See Wis. Stats. Chapter 950, Rights of Victims and Witnesses of Crime;
 12. Any record that would endanger an individual’s life or safety, Wis. Stat. §19.35;
 13. Any record that would identify a confidential informant, Wis. Stat. § 19.35;
 14. Any record, the release of which would not be in the public interest under the Wisconsin Open Records law. Refer to Policy & Procedure 10.03: Open Records.

VI. PERMISSIBLE DISCLOSURE OF INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES

- A. The DPPA does allow release of records with the exclusion of any of the personal information derived from Department of Motor Vehicle records. All other non-personal information contained within records can be released to a requesting third party. For example, personal information does not include factual information as to where, when or how an incident occurred.

VII . PERMISSIBLE DISCLOSURE OF PERSONAL INFORMATION DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES

- A. The DPPA allows personal information derived from the Wisconsin Department of Motor Vehicles records to be used in 14 specific exceptions. Seven (7) of these exceptions are most relevant to this policy. They are as follows:
 1. For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories;
 2. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private persons or entity action on behalf of a federal, state, or local agency in carrying out its functions;
 3. For the purpose of bulk distributions for surveys, marketing or solicitations **if the State has obtained the express consent of the person to whom such personal information pertains;**
 4. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court; and
 5. For any other use specifically authorized under the laws of the state that holds the records, if such use is related to the operation of a motor vehicle or public safety.
 6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting.
 7. Information can be shared with towing companies for the purpose of determining vehicle ownership and allowing contact with that owner.

VIII. RELEASE OF RECORDS DERIVED FROM THE DEPARTMENT OF MOTOR VEHICLES

- A. If there is a question as to the release of a record derived from the Department of Motor Vehicles, the request shall be referred through chain of command and to the Village Attorney's Office for an opinion.

No release of records derived from the Department of Motor Vehicles is permitted without the consent of the Chief of Police or Designee.

- B. All releases of records shall be consistent with Village of Elkhart Lake Ordinances and applicable state and federal laws.
- C. All releases of records derived from the Department of Motor Vehicles shall be in writing.

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/01/2015