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April 11, 2014

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Re: Petition for Public Records Disclosure Order
Oregon State Police

Dear Mr. Peterson,

This letter is the Attorney General's order with respect to (1) your petition for an order requiring the Oregon State Police (OSP) to disclose records to you under the Oregon Public Records Law, and (2) your request that our office reconsider its prior order denying an earlier petition you filed with respect to the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV). For the reasons that follow, we respectfully deny your petition and decline to reconsider our prior order.

Your Petition Regarding OSP

Your petition with respect to OSP seeks "[p]olice reports of motor vehicle accidents received by Driver and Motor Vehicle Services from June 28, 2013, to July 18, 2013." In response to your request for those records, OSP stated that it would provide them to you only with "personal information" redacted.[1] OSP explained that its officers sometimes use DMV records to obtain personal information included in the accident reports. OSP further explained that it is prohibited from redisclosing personal information that comes from DMV records except under limited circumstances that did not apply. OSP also provided you with an estimate of the cost to provide the documents in redacted form.

In your petition to this office, you ask the Attorney General to order OSP to do one of two things: (1) provide all of the police accident reports you requested without any personal information redacted; or (2) order OSP, at its own expense, to segregate the accident reports that

[1] OSP alternatively offered to provide personal information to the extent you could provide OSP with written permission for disclosure from the individual whose information is included in the record.

contain personal information from DMV records, from those that do not, and to provide you with unredacted copies of the reports that contain no personal information derived from DMV records.

Analysis

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. Public records are exempt from disclosure if state or federal law prohibits disclosure of the record or information. ORS 192.502(8) and (9). A public body asserting records are exempt from disclosure bears the burden to show that the exemption applies. ORS 192.450(1).

OSP asserts that the accident records you request contain personal information that is exempt from disclosure pursuant to both Oregon and federal law and must be redacted. You contend that the personal information is not exempt from disclosure and need not be redacted. As we will now explain, we agree with OSP.

Police officers are required to compete accident reports for certain vehicle accidents that they investigate. ORS 810.460. The officer who completes the report submits it to DMV. ORS 810.460. However, nothing requires that an officer use any specific source to obtain the information the officer includes in the accident report. According to OSP, police officers often use the Law Enforcement Data System (LEDS) to get personal information about the individuals involved in the accident. LEDS contains personal information from DMV records. *See* OAR 257-015-0040(5) (LEDS maintains a computer link with DMV). An officer therefore may include personal information derived from DMV records in the accident report.

Both state and federal law restrict the disclosure of personal information contained in DMV's motor vehicle records.[2] Under the state law, "personal information" includes "[d]river license, driver permit or identification card number"; "[n]ame"; "[a]ddress"; and "[t]elephone number." ORS 802.175(3). Except as provided in ORS 802.179, DMV is prohibited from disclosing "personal information about an individual that is obtained by the department in connection with a motor vehicle record." ORS 802.177. However, pursuant to ORS 802.179, DMV must disclose personal information from motor vehicle records to another "government agency for use in carrying out its governmental functions." ORS 802.179(1). Under the statute, DMV must provide personal information to police officers for accident reports pursuant to ORS 802.179(1) because the officer is using the information to carry out the statutorily mandated function of completing accident reports. *See* 49 Or Op Atty Gen 127 (1998) (ORS 802.179 "mandates" that DMV provide personal information to state agencies for use in carrying out official functions and disclosing personal information through LEDS for use by law enforcement is authorized by the statute).

Once DMV has disclosed personal information to another state agency, however, Oregon law limits that agency's ability to redisclose the information. ORS 802.181 provides:

(1) Except as otherwise provided in subsections (2) to (5) of this section, a person or government agency that is authorized under ORS 802.179 to receive personal information from motor vehicle records may resell or redisclose the information only:

(a) To a person or government agency authorized to receive the information under ORS 802.179 and only if the person or government agency is authorized by the Department of Transportation to receive the resold or redisclosed information; and

(b) For purposes authorized under ORS 802.179.

That statute prohibits OSP from redisclosing personal information it obtains from DMV records, unless redisclosure meets the requirements ORS 802.179. That is, unless the person to whom the information will be redisclosed is authorized to receive it and that person intends to use the information for an authorized purpose, OSP may not disclose the personal information. *See* 49 Or Op Atty Gen 127 (1998). ORS 802.179 identifies nineteen situations in which a state agency may permissibly redisclose personal information obtained from DMV. None of those situations apply here. The only provision that would possibly allow OSP to redisclose personal information in this situation, ORS 802.179(12), requires that you have "written permission from the individual whose personal information is requested." We understand that you do not have such written permission. Because ORS 802.179 does not authorize disclosure of personal information in response to your request, we agree with OSP that it may not provide you with unredacted accident reports.

The legislative history supports that conclusion. In a letter to the House Transportation Committee, DMV stated that: "The bill does not affect disclosure of the content of a person's driving record. *Although we can't include the name and address of the driver*, DMV can still honor requests for driving records." Written Statement of Bill Seely, DMV Information Services on HB 2096 (February 19, 1997) (emphasis added). The legislature would have understood that personal information derived from DMV records would be exempt from disclosure under the Oregon statutes.

The federal Driver's Privacy Protection Act (DPPA) also prohibits OSP from redisclosing personal information that it obtains from DMV records for use in accident reports. The federal law is similar to Oregon law (and, as you note, the federal law was the impetus that led the Oregon legislature to adopt ORS 802.175 to ORS 802.191). *See* 49 Or Op Atty Gen 127 (1998) (describing how federal law led to the Oregon statutes). The DPPA defines "personal information" 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." 18 USC § 2725(3). "Personal information" does not include "information on vehicular accidents, driving violations, and driver's status." *Id.*

The DPPA begins with a general restriction on the release of personal information by a state DMV. 18 USC §2721(a). The statute then describes various exceptions to that restriction.

18 USC §2721(b). If an exception applies, then the statute also describes when the recipient of the record may redisclose it to someone else. 18 USC §2721(c). Specifically, that section allows for authorized recipients to "resell or redisclose the information only for a use permitted under subsection (b)." 18 USC §2721(c). Accordingly, subsection (b), like its Oregon counterpart ORS 802.179, provides the specific situations in which personal information from a DMV record may be disclosed or redisclosed. That subsection identifies fourteen situations in which personal information from DMV may be disclosed or redisclosed. The first, like ORS 802.181, provides that DMV may disclose personal information "for use by any government agency, including any * * * law enforcement agency, in carrying out its functions." 18 USC §2721(b)(1). Pursuant to that provision, DMV lawfully disclosed the personal information to OSP through LEDS, and police officers may use that personal information in carrying out their duties, including completing accident reports. However, the federal statute prohibits OSP from redisclosing that personal information to an individual unless redisclosure is specifically permitted by the subsection (b) of the statute. *See Wiles v. Worldwide Info.*, 809 F Supp 2d 1059, 1073 (WD Mo 2011) (statute prohibits disclosure that does not fall within the fourteen uses enumerated in § 2721(b)). Nothing in subsection (b) would permit OSP to redisclose personal information in response to a public records request. Such disclosure would not be "for use by" OSP in carrying out its official functions. *See Senne v. Village of Palatine*, 695 F3d 597, 606 (7th Cir 2012) (police officer permissibly used DMV records to obtain personal information to use in writing a parking ticket, however, disclosing the personal information contained on the parking ticket to others was not disclosure "for use" by law enforcement and therefore was prohibited).

Moreover, the legislative history does not support your position that OSP may disclose the personal information in its accident reports. The legislative history indicates that to the extent driver records include personal information, that personal information is exempt from disclosure except in limited circumstances. Considered in context, the statements of bill sponsor Congressman James P. Moran indicate that the personal information is not subject to disclosure even though some information about accidents is subject to disclosure:

> The bill *will prohibit* motor vehicle departments (DMV) from disclosing personal information (name, address, telephone number, social security number, driver's identification number, medical and disability information, photograph) about a licensee *unless there is a specific, approved reason for doing so.*
>
> This bill will still allow complete access to driver record/vehicle registration information. Reporters and private investigators will still have complete access to all information connected with the operation of a motor vehicle.

Testimony of Congressman Moran (February 3, 1994), 1994 WL 212698 (emphasis added). Congressman Moran later testified that an amendment that he proposed "in no way affects access to accident information about the car or driver" and that "[n]othing in this bill would stop anyone from finding out about another person's driving record, accidents, or status." 140 Cong Rec H2523 (April 20, 1994).

In context, Congressman Moran appears to be acknowledging that people could still obtain information about an individual's traffic accidents and driving records. That is, if someone wanted to check on another person's driving record or the accident history of a car, he or she will be able to do so. He was not saying, however, that once a person was in an accident, that person's personal information with DMV was no longer exempt from disclosure.

That understanding of Congressman Moran's testimony is consistent with the text of the DPPA. The DPPA excludes "information on vehicular accidents, driving violations, and driver's status" from the definition of "personal information." 18 USC § 2725(3). The DPPA also provides for disclosure of personal information in connection with issues of driver safety, insurance claims and underwriting, and in connections with employment that requires a commercial driver license. *See* 18 USC § 2721(b)(2), (6), (9). The DPPA *does not* provide for the release of personal information contained in accident reports.

In sum, under both the state statutes and the DPPA, we conclude that OSP cannot redisclose personal information derived from DMV records.

You also argue that OSP cannot redact *all* personal information from *all* of the accident records because police officers obtain some of that personal information from sources other than DMV, such as directly from the drivers involved in an accident. Petition at 2. And you take the position that if OSP has "commingled disclosable and nondisclosable information" that "does not mean that the disclosable information should not be disclosed." Petition at 2. While OSP does not dispute that occasionally personal information in its accident reports comes from non-DMV sources, we conclude under these specific facts that OSP has met its burden to show that all of the personal information is exempt.

OSP informs this office that approximately 95% of the time, all of the personal information in its accident reports comes from DMV records. Specifically, when OSP officers respond to an accident, they run the license plate numbers of the vehicles involved in the accident through OSP dispatch. OSP dispatch's computer system directly ties into DMV motor vehicle records through LEDS. When the officers come back to the patrol station, they access the OSP dispatch run of the vehicle license plates (which has personal information from the DMV motor vehicle record in it). When the officers access the dispatch run in the station, their software auto populates the fields on the accident form. Accordingly, personal information derived from DMV records is automatically inserted into the accident report by OSP's computer system. Occasionally, when officers are out of range, they may enter some personal information manually. However, when they do that, they will usually still pull the information from LEDS once they are back at the station.

OSP further states that it is not possible to determine, with respect to any specific report, that the police officer completing the report did *not* obtain personal information from DMV records using the LEDS system. Thus we are faced with a situation in which, with respect to any particular report, the only conclusion it is possible to draw is that it is 95% likely that all of the personal information appearing on the report was entered directly from DMV records via LEDS.

If it were possible for OSP to determine with greater certainty whether information in particular reports did or did not come from DMV records, we would require OSP to do so.[3] And, if the relevant laws made this information subject to a discretionary exemption – rather than a prohibition against redisclosure – it is possible that we might reach a different result. But under these specific circumstances, we conclude that OSP has adequately met its burden to demonstrate any given piece of personal information in the reports is, more likely than not, subject to the federal and state prohibitions against redisclosure and therefore exempt from public disclosure pursuant to ORS 192.502(8) and (9)(a).

In light of that conclusion, OSP is not obligated to segregate exempt from nonexempt materials. We note that the obligation to make nonexempt information available arises where it is reasonably possible to do so. *Turner v. Reed*, 22 Or App 177, 186, 538 P2d 373 (1975).[4]

For those reasons, we respectfully deny your petition with regard to OSP.

Your Petition Regarding DMV

With respect to DMV, you ask us to reconsider our prior order because you believe that some aspects of the legislative history of the relevant federal laws suggest that Congress intended its disclosure prohibition to apply more narrowly than the text might suggest. We have reviewed your submission and decline to reconsider our prior order.

Conclusion

For the foregoing reasons, your petition and your amended petition seeking reconsideration are respectfully denied.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

[3] We think it would be a good idea for OSP to track information it obtains that is subject to state and federal redisclosure prohibitions.

[4] Current ORS 192.505 was enacted after the *Turner* decision, and is not explicitly limited to instances where segregation is reasonably possible. However, a statute in existence at the time *Turner* was decided, then ORS 192.500(3), was essentially identical to current ORS 192.505.