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May 10, 2010

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You both have requested an opinion from this office that addresses the following issues:

May/must a sheriff's department redact personal information from vehicular accident reports that are requested pursuant to a public records request when it is the policy of the sheriff's department to require deputies responding to vehicular accidents to obtain and utilize the information from the Tennessee Department of Safety's motor vehicle database (hereinafter referred to as "the database") when completing the accident/incident report?

Are Tenn. Code Ann. Section 55-25-104 and the requirement to redact personal information triggered if a law enforcement agency accesses the database solely to confirm personal information obtained directly from a driver's license or registration and subsequently entered onto an accident/incident report?

#### I. Analysis

Tenn. Code Ann. Section 55-10-108(b) requires every law enforcement officer who investigates a motor vehicle accident to submit a report to the Department of Safety within seven (7) calendar days from the accident. Tenn. Code Ann. Section 55-10-108(f) reads, "Any written report of a motor vehicle accident investigated by the department or prepared pursuant to subsection (b) shall be open to public inspection as a public record under the public records laws codified in title 10, chapter 7." While Tenn. Code Ann. Section 55-10-180(f) provides for public access to accident reports, information within the accident reports may be required by both federal and state law to be redacted prior to the reports being made accessible to the public.

On March 6, 2009, this office released opinion 09-03 which addressed the confidentiality of driver identification numbers obtained from the database and subsequently made part of an accident/incident report. The opinion goes into detail about both the federal Driver's Privacy Protection Act of 1994 and the state Uniform Motor Vehicle Disclosure Act (hereinafter referred to collectively as the "Acts") and the manner in which these Acts impact the release of certain information contained within an accident/incident report.

The opinion begins by outlining the fact that both of these Acts prohibit state departments of motor vehicles, their

officers, employees, and contractors from knowingly disclosing personal information about a person that is obtained from the department in connection with a motor vehicle record. 18 U.S.C. Section 2725(1)(2007) and Tenn. Code Ann. Section 55-25-104. "Motor vehicle record" and "personal information" are both defined terms within each of the Acts. In the federal Driver's Privacy Protection Act of 1994, "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" and "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. Section 2725(3)(2007) and 18 U.S.C. Section 2725(1)(2007). In the state Uniform Motor Vehicle Disclosure Act "motor vehicle record" is defined as:

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

Tenn. Code Ann. Section 55-25-103(6). "Personal information" is defined as:

Information that identifies a person, including an individual's photograph, or computerized image, social security number, driver identification number, name, address (but not 5-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.

Tenn. Code Ann. Section 55-25-103 (8).

While both of these Acts establish a general prohibition against knowingly disclosing personal information obtained by the department in connection with a motor vehicle record, there are a number of enumerated exceptions within the Acts. Entities and persons that are permitted to obtain personal information from the department of motor vehicles for one of the enumerated uses are referred to in both Acts as "authorized recipients." 18 U.S.C. Section 2721(c)(2007) and Tenn. Code Ann. Section 55-25-107(b). A local law enforcement agency is an authorized recipient when the agency obtains personal information from the department for use when carrying out the functions of the agency. For the most part, authorized recipients are permitted to resale or redisclose the personal information that is obtained from the department to other entities and persons for the same enumerated uses for which the authorized recipient was able to obtain the information. 18 U.S.C. Section 2721(c)(2007) and Tenn. Code Ann. Section 55-25-107(b)(1)-(10) and (13)-(14)<sup>1</sup>.

Based upon the language of both Acts, it is the opinion of this office that prior to providing a requestor records in response to a public records request that contain personal information that has been obtained by the department in connection with a motor vehicle record, all personal information is required to be redacted, unless the personal information contained within the requested records is going to be used in accordance with one of the

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<sup>1</sup> On November 3, 2009, this office released memo 09-14 which lists and discusses the circumstances in which disclosure of personal information that has been obtained by the department in connection with a motor vehicle record is permitted to be redisclosed or resold by an authorized recipient. The memo specifically addresses local law enforcements ability to redisclose or resell personal information that it has obtained from the database. The memo is attached.

enumerated exceptions<sup>2</sup>. It is important to note that even if a public records request is made for records that contain personal information that has been obtained by the department in connection with motor vehicle records and the intended use of the personal information contained within the records is captured in one of the exceptions, disclosure of the personal information in almost all circumstances is permitted but not required.

In response to your first question, it is the opinion of this office that any personal information that is actually obtained from the database, and not obtained from the individuals to whom an accident/incident report pertains or from other sources such as the driver or the driver's license or registration, and thereafter made a part of an accident/incident report is required to be redacted prior to making the report accessible to the public, if the intended use of the personal information contained within the report does not come within one of the enumerated exceptions. In response to your second question, it is the opinion of this office that Tenn. Code Ann. Section 55-25-104 is not triggered if a law enforcement officer obtains personal information from the individuals to whom the accident/incident report pertains or from one of the other sources mentioned above, enters that information onto the accident/incident report or into the system that generates the report, and then subsequently verifies the information obtained from the individuals or other sources through the database.

Likewise, it is the opinion of this office that if a local law enforcement officer obtains personal information directly from the individuals to whom the accident/incident report pertains or from one of the other sources mentioned above and thereafter verifies the information through the database and after verification enters the personal information onto the report or into the system that generates the report, the prohibition regarding disclosure found in Tenn. Code Ann. Section 55-25-104 is not triggered because the information was not actually "obtained by the department in connection with a motor vehicle record." 18 U.S.C. Section 2721(a)(2007) and Tenn. Code Ann. Section 55-25-104. However, if the local law enforcement officer obtains personal information directly from the individuals to whom the accident/incident report pertains or from one of the other sources mentioned above, thereafter verifies the information obtained through the database, receives differing personal information as a result of the verification, and subsequently enters the information obtained from the database and not the individuals onto the report or into the system that generates the report, then it is the opinion of this office that the prohibition regarding disclosure is triggered and the personal information could only be disclosed if the intended use of the information fell into one of the enumerated exceptions.

Please feel free to call me at (615) 401-7891 if you have any further questions.

Elisha D. Hodge  
Open Records Counsel

#### Attachments

- 09-03 Confidentiality of Driver Identification Numbers
- 09-14 The Release of Drivers License Numbers to Insurance Companies

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<sup>2</sup> Recently, this office has been contacted by a number of local law enforcement agencies that have had public records request made for accident reports. The requests have been made by requestors who intend to use the information contained within the reports for solicitation purposes. When personal information contained within the accident report is obtained from the database and the personal information is going to be used for purposes of solicitation, disclosure of that information is permitted but not required only when the solicitation is being done in bulk and the state has obtained the express consent of the individual to whom the personal information pertains or the requestor can demonstrate that he/she has obtained the written consent of the individual to whom the personal information pertains. Tenn. Code Ann. Section 55-25-107(12)-(13).



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Captain Charles T. Ziegler  
Athens Police Department  
815 N. Jackson Street  
Athens, Tennessee 37303

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.

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Office of Open Records Counsel



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Justin P. Wilson  
Comptroller

TO: Records Custodians

FROM: Elisha D. Hodge, Open Records Counsel

DATE: November 3, 2009

SUBJECT: Release of Drivers License Numbers to Insurance Companies

The purpose of this memo is to discuss in detail a provision that was referenced in an opinion that was issued by this Office on March 6, 2009. *See* attached opinion. Recently, it was brought to my attention by several different sources that driver identification numbers or drivers license numbers are being redacted from accident reports that are being requested by insurance companies for the purpose of processing claims. It is my understanding that Tenn. Code Ann. Section 55-25-107(a) is being cited as the legal basis that prohibits disclosure of the information. In this memo, I will discuss in detail the fact that while Tenn. Code Ann. Section 55-25-107(a) generally prohibits the disclosure of "personal information," which includes drivers license numbers, obtained by the Department of Safety (hereinafter "Department"), any agent thereof, or any "authorized recipient" when the personal information is obtained by the Department in connection with a motor vehicle record, there are also a number of uses for which "personal information" may be disclosed. One such use is found in Tenn. Code Ann. Section 55-25-107(6) which provides that "personal information" may be disclosed for use "[b]y any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting."

On March 6, 2009, this Office released an opinion that addressed whether or not a law enforcement agency was required to redact a drivers license number from an accident or incident report prior to making the report available for public inspection or copying, when the drivers license number had been obtained from the Department of Safety's motor vehicle database. The opinion analyzed both the federal Drivers Privacy Protection

Act and the Tennessee Uniform Motor Vehicle Records Disclosure Act. The part of the opinion that is relevant to this memo reads as follows:

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. (Emphasis added).

So, while the Office opined that a local law enforcement agency is not permitted to release drivers license numbers on accident or incident reports pursuant to a public records request, when the drivers license number was obtained from the Department’s motor vehicle database, the opinion also referenced the fact that there are a number of circumstances and uses for which a local law enforcement agency would be permitted to disclose a drivers license number obtained from the Department’s motor vehicle database. Tenn. Code Ann. Section 55-25-107(c) reads in part:

An authorized recipient of personal information, except a recipient under subdivision (b)(11) or (12), may resell or redisclose the information only for use permitted under subsection (b), but not for uses under subdivision (b)(11) or (b)(12). . . Any authorized recipient, except a recipient under subdivision (b)(11), that resells or rediscloses personal information covered by this section shall keep for a period of five (5) years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and shall make those records available to the department of revenue or the department of safety upon request.

Tenn. Code Ann. Section 55-25-107(b) that is referenced in the provision above states that “personal information” may be disclosed by an authorized recipient for use as follows:

- (1) 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;
- (2) 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, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of nonowner records from the original owner records of motor vehicle manufacturers;
- (3) In the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
  - (A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - (B) If the information so submitted is not correct or is no longer correct, to obtain the correct information, but only for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual;
- (4) 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;
- (5) In research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;
- (6) 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, antifraud activities, rating or underwriting;
- (7) In providing notice to the owners of towed or impounded vehicles;
- (8) By any licensed private investigative agency or licensed security service for any purpose permitted under this subsection (b);

- (9) By an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver license that is required under [49 U.S.C. § 31301 et seq.](#);
- (10) In connection with the operation of private toll transportation facilities;
- (11) For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains;
- (12) In bulk distribution for surveys, marketing or solicitations if the state has obtained the express consent of the person to whom the personal information pertains;
- (13) By any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- (14) For any other use specifically authorized under the law of this state, if that use is related to the operation of a motor vehicle or public safety.

As noted above, a local law enforcement agency would only be permitted to disclose a drivers license number for those uses described in subsections (b)(1)-(10) and (b)(13)-(14). It is the opinion of this Office that subsection (b)(6) permits a local law enforcement agency to disclose drivers license numbers, as well as any other "personal information" that has been obtained from the Department's motor vehicle database, to an insurance company who is using the information to process a claim.