



STATE OF INDIANA

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October 16, 2013

Tina Kingsbury
C/o Goshen City Police Department
via email: police@goshencity.com

Re: *Informal Inquiry 13-INF-52; Motor Vehicle Records*

Dear Ms. Kingsbury:

This is in response to your informal inquiry regarding the legality of including personal information on a citation left with a motor vehicle when the driver is not present. You have framed your question by citing a number of authorities: Access to Public Records Act ("APRA"), 18 U.S.C. 2721 and the 7th Circuit Decision *Senne v. Vill. of Palatine*, 695 F.3d 597 (2012). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* and the federal statute and case law.

BACKGROUND

On September 16, 2013 you submitted a request for an informal opinion regarding the practice of placing a citation on an illegally parked vehicle. The citation would contain the owner's information. Given the Access to Public Records Act, you acknowledge that the citation is a public record, but question the confidentiality of the information on the citation under U.S.C. 2721 (The Driver's Protection Privacy Act "DPPA") and the decision by the Court of Appeals in *Senne v. Palatine*.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The City of Goshen Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless

the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Ind. Code § 5-14-3-5 states if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying: Information that identifies the person including the person's name, age, and address. As stated above Ind. Code § 5-14-3-3(a) exempts from disclosure of records that are declared confidential by another statute. 18 U.S.C. 2721 explicitly states that 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 is confidential. 18 U.S.C. 2725(3) defines that 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.¹

Additionally, the 7th Circuit Decision *Senne v. Vill. of Palatine*, 695 F.3d 597 (2012) has addressed this issue specifically. The holding ruled the following:

The default rule of the Driver's Privacy Protection Act, 18 U.S.C.S. §§ 2721-25, is that a state department of motor vehicles, and any person or entity authorized to view its records, is prohibited from sharing certain information. The statute then authorizes specific disclosures—each of which has a limited object and a limited class of recipients.

The City of Goshen Police Department is authorized by the Indiana Bureau of Motor Vehicles to issue citations and view its records; therefore, they are a public entity subject to the Federal DPPA. As such, the Department is prohibited from including in the citation the information enumerated in the DPPA. An acceptable citation form can include the violation of the city parking ordinance and the driver's license plate. Of course, any information used in processing the citation for enforcement purposes can be maintained by the officer and the city or county court responsible for enforcing the violation.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Luke H. Britt
Public Access Counselor

¹ Please note that Indiana's Driver's Privacy Protection statute found at Ind. Code 9-14-3.5 mirrors the provisions in the Federal Act.