

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16th DIVISION

DANIEL E. WREN

PLAINTIFF

vs.

No. 60CV-15-2303

ARKANSAS STATE POLICE
and BILL SADLER, in his
official capacity as custodian
of the records for the
ARKANSAS STATE POLICE

DEFENDANTS

OPINION AND ORDER

Plaintiff, Daniel Wren, brings this case against the Arkansas State Police and Bill Sadler, its Public information Officer, under the aegis of the Arkansas Freedom of Information Act (the "FOIA"), Ark. Code Ann. § 25-19-101, et seq. and § 27-53-209 (a), after requests to inspect traffic accident reports obtained by Troop A of the Arkansas State Police from May 1, 2015 through May 21, 2015 were denied. Plaintiff, an attorney, requests access for the purpose of ascertaining names and addresses of potential personal injury clients and soliciting legal business by mail.

The parties agree accident reports are *public records* as defined by Ark. Code Ann. § 25-19-103 (6) (A) and § 27-53-305. The State Police ("ASP"), represented by the Attorney General, while conceding the records sought are public records "deny that Ark. Code Ann. § 25-19-103, § 27-53-305, or any other law, requires that the accident reports be produced without proper redactions...." [Defendant's Answer to Complaint, ¶ 6].

At the heart of the matter is ASP's contention that the requested accident reports contain 'personal information' (mailing addresses and descriptive information in particular) that comes

from and pertains to motor vehicle records, and is protected by the federal Drivers Privacy Protection Act (“DPPA”), 18 U.S.C.A. § 2721 and Ark. Code Ann. § 27-53-202(b)(2)(B) [Defendant's Answer to Complaint, ¶ 20].¹

ASP says the DPPA supersedes the Arkansas FOIA, is an exemption to it and thus “Arkansas FOIA does not require that the ASP make accident reports available to the public without proper redactions....” [Defendant's Answer to Complaint, ¶ 23]. ASP proposes to ‘redact’ or black out various information including addresses of persons described in State Police Accident Reports.

Wren argues that these redactions deprive him, as well as the press² and the public, of vital reference information concerning those involved in vehicular accidents-such as their addresses. At oral argument, Plaintiff gave the example that, in the future, the public could not know whether the name “William J. Clinton” listed on a hypothetical accident report redacted as ASP proposes was a person involved in an accident living in Arkansas or the former President who now resides in New York. The point, though somewhat fanciful, is well taken.

Licensed drivers in Arkansas operate vehicles on public highways. When citizens are involved in an accident on a public road, public officials request them to identify themselves, if able, and produce certain personal information such as their license and registration. The driver’s consent is expressly given in many instances. Consent has also been considered implied in others by virtue of the driver being granted a license by the state to use the public roadway. *O’Neill v. State*, 322 Ark. 299, 299, 908 S.W.2d 637 (1995). In either instance, the investigating officer

¹ The DPPA classifies such information in two categories: “personal” (name, address, etc.) and “highly restricted personal information” (social security number, medical/ disability information, etc.). The latter is not disclosable on traffic accident reports and thus not at issue in this case.

² It is agreed the DPPA makes no exceptions for the press.

receives initial basic personal information (or the consent to obtain it), not from the State, but from the original source-the licensed driver.

In general, the legal traditions in Arkansas have jealously guarded against restrictions on public information. Exceptions are allowed of course, especially where the privacy of minors are involved. Ark. Code Ann. § 27-53-202, referred to by the Attorney General, is one such exception designed to protect information relating to children. Plaintiff does not seek such information, however and the Court would have no hesitation to uphold this exception in any event.

The Driver's Privacy Protection Act of 1994 (18 U.S.C. §§ 2721-2725) was passed to protect "State motor vehicle records" ("DMV" records) maintained in "A State department of motor vehicles, and any officer, employee, or contractor thereof...." It is undisputed ASP is not a State department of motor vehicles and its troopers are not officers, employees, or contractors thereof. It argues, however that it is an authorized recipient of DMV records and as such may not disclose personal information without express consent of persons involved in an accident.³

The last section of the DPPA, 18 U.S.C. § 2725 (3) states:

(3) "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....*"

[*Emphasis added*]

³ ASP contends DPPA prohibitions on disclosure of personal information should strictly apply under the new policy, however, its witness, Mr. Downs, indicated the new Rule only requires consent of one party in an accident to obtain personal information as to all parties involved.

ASP cites *Maracich v. Spears*, 133 S. Ct. 2191, 2195 (2013), for the proposition that the information sought is not subject to disclosure absent express permission. In *Maracich*, lawyers sought bulk drivers' license information stored relating to thousands of licensees. The purpose of the solicitation was to acquire clients for a class action suit against several car dealerships concerning purchases of vehicles.

The case is distinguishable on its facts from the case at bar. No accident on a public highway occurred in the *Maracich* case and no police agency interviewed licensees or compiled a report.

Plaintiff cites *Mattivi v. Russell*, 2002 WL 31949898 (D. Colo.2002) in which a Federal District Court in Colorado held accident reports were not "motor vehicle records" under the DPPA and that the exception in 18 U.S.C. § 2725 makes clear Congress' intent not to include information on vehicular accidents under the prohibitions of the Act.

Mattivi also illustrates another issue tangential to this case: the public's right to know about acts of public officials. Mr. Mattivi was the mayor of Central City Colorado and was involved in a single-car accident. He was cited for driving under the influence of alcohol and reckless driving. The *Weekly Register-Call*, a newspaper covering Central City, received the accident report containing Mattivi's name, address, telephone number and driver's license number. Mattivi claimed the publication of his personal information from the State Motor Vehicle Records violated the DPPA.

As in the case before this Court, Mattivi argued the Colorado State Patrol was an agent of the Department of Revenue (Colorado's "motor vehicle department") by virtue of statutory requirements that accident reports be provided to the Department. The Federal District Judge in Colorado wrote:

“Viewing the language of the DPPA as a whole, I conclude that the term "motor vehicle record" refers only to records issued by a department of motor vehicles--and not by an agent thereof--that pertain to "a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card." Under this construction, the accident report generated by the Colorado State Patrol, and provided to defendants by that agency, is not a "motor vehicle record"-under the DPPA, and defendants' publication of the report in the Paper did not violate the DPPA.

Finally, I also conclude that the plain language of exception in section 2725(e) makes clear that Congress did not intend "information on vehicular accidents" to be included within the Act's prohibition of disclosure of "personal information...."

Considering these and the other citations provided by both counsel in pre and post hearing briefs together with attached attorneys general opinions from Arkansas and Wisconsin on this subject, the arguments of counsel and the testimony of witnesses, the Court, FINDS, ORDERS AND ADJUDGES:

1. On May 21, 2015, Plaintiff hand delivered a written FOIA request to inspect accident reports obtained by Troop A of the Arkansas State Police (“ASP”) from May 1, 2015 through May 21, 2015.

2. Plaintiff’s reason for requesting to inspect the accident reports is to search for and solicit potential clients for his law practice.

3. Mr. Sadler is not the custodian of records, but Plaintiff submitted his FOIA request to the proper agency and there is no dispute concerning the validity of the request.

4. On May 22, 2015, Plaintiff filed his Complaint, stating that accident reports are public records and Ark. Code Ann. § 27-53-202 does not allow for a blanket denial of the inspection of crash reports.

5. Pursuant to Ark. Code Ann. § 27-53-202(b) (2) (B), Plaintiff does not seek or object to the names and addresses of minors being redacted.

6: ASP has not yet provided the accident reports for inspection by Plaintiff due to

conflicting views of the application of the Driver's Privacy Protection Act ("DPPA") and the current lawsuit. 18 U.S.C. § 2721, *et seq.*

7. ASP has offered to provide the requested accident reports for inspection with minor information redacted pursuant to Ark. Code Ann. § 27-53-202(b) (2) (B) and personal information redacted pursuant to the DPPA.

8. Accident reports are public records subject to the Arkansas Freedom of Information Act ("FOIA").

9. The Arkansas State Police is not an agent of the Arkansas Department of Motor Vehicles.

10. A motor vehicle accident report prepared by the Arkansas State Police is not a "motor vehicle record" as defined by the Driver's Privacy Protection Act.

11. In the vast majority of cases, an Arkansas State Trooper obtaining information regarding the name and address of an individual for the purpose of preparing a motor vehicle accident report does so by being given the individual's driver's license from the individual.

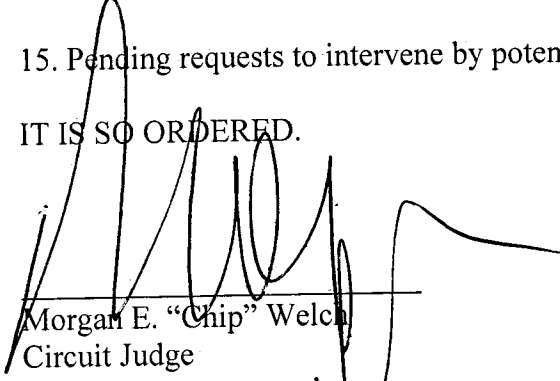
12. According to undisputed testimony, ASP currently provides unredacted information concerning all drivers involved in multi-car accidents regardless of whether drivers in other vehicles have consented. According to documents filed with Plaintiff's post trial briefing, ASP recently, may have recently given more accident information to the media than to private requestors in some cases, but regardless, the Court notes the DPPA provides no exceptions for the press nor does the ASP policy guarantee of public media access in the future.

13. The policy announced by ASP effective after January 1, 2015 relating to redactions of accident reports which is the subject of Plaintiff's complaint is DECLARED to be violative of the Arkansas Freedom of Information Act and is hereby ENJOINED.

14. As requested by the Attorney General, this Order is STAYED for 60 days to allow for the State to appeal.

15. Pending requests to intervene by potential Plaintiffs are DENIED as moot.

IT IS SO ORDERED.



Morgan E. "Chip" Welch
Circuit Judge

Date

6/23/15