



POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

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

NUMBER: 10.04

ISSUED: 10/27/2021

EFFECTIVE: 10/27/2021

SCOPE: All Department Personnel

DISTRIBUTION: Policy & Procedure Manual

REFERENCE: Refer to Section III below

RESCINDS

AMENDS

WILEAG 5TH 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
- IX. PROTECTED INFORMATION IN CIRCUIT COURT RECORDS

I. POLICY

- A. The Sturgeon Bay 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 Sturgeon Bay 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 Patient Health Care Records
- 51.30 Medical Treatment Records
- 146.82 Confidentiality of Patient Health Care Records
- 801.19 Protected Information in Circuit Court 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. Wisconsin State Case Law:

- New Richmond News v. City of New Richmond, 2014 AP 1938 (Ct. App. 5/10/2016)

- D. 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 (HIPPA)

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.
- F. **“Other Sources”** means any other source which includes, but is not limited to, a reliable person (such as a victim, witness, complainant, etc.), a reliable government agency, or any other source where a reasonable person would believe the source is reliable.

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.
- B. Effective 05/10/2016 and pursuant to a Wisconsin Appeals Court decision in *New Richmond v. City of New Richmond*, law enforcement agencies may release **unredacted** traffic crash reports without violating current the DPPA law.

The court ruled that traffic crash reports are under the DPPA exceptions 18 U.S.C § 2721 (b)(14) as noticed above in VII.A.5. At this time, this ruling applies **only** to traffic crash reports.

Also refer to Federal Driver Privacy Protection Act Permissible Uses From #14.

- C. Effective 05/10/2016 and pursuant to a Wisconsin Appeals Court decision in *New Richmond v. City of New Richmond*, law enforcement agencies may release, in some instances, **unredacted** personal information contained in incident reports pursuant to Wisconsin Open Records without violating current the DPPA law.
1. The Court of Appeals found that if any personal information was first obtained from “other sources” and was only verified using DMV records, then that personal information is not prohibited from release by the DPPA.
 2. In cases where the personal information was first obtained from only a DMV record, then the DPPA prohibits release of that personal information unless one of the fourteen DPPA exceptions applies, and if the information constitutes highly restricted personal information, then the agency must determine whether one of the four exceptions applies.
 3. In cases where this information was first obtained from “other sources” and then verified using a DMV record, the DPPA does not apply and

the information may be released unless another statute, common law, or the balancing test prohibits release of the record.

4. Under Wisconsin Open Records Law, the burden of establishing a legitimate basis to withhold access to the record belongs to a law enforcement agency and not the requester. The agency withholding access under the DPPA must be able to prove the information within the requested record was first obtained from a DMV record if the agency claims the DPPA prohibits release.

Likewise, in order to preserve a defense to a DPPA violation claim, a law enforcement agency asserting the DPPA does not apply should be in a position to prove the information was first obtained from a source other than the DMV record, and was merely verified using the DMV record.

5. If the DPPA does prohibit release of the requested information, then the requester must demonstrate that he/she meets one of the narrow exceptions to the prohibition of release under the DPPA (refer to the FDDPA Form). If the agency determines the exception applies, and releases the personal information from the DMV record, then the agency should identify the applicable exception and inform the requester of the requester's duty to comply with the DPPA relating to use and the requester's additional disclosure of protected information.
6. The Department should also note that even if the DPPA does not apply, there may be other statutory exemptions that prohibit the Department from disclosing certain information under the Wisconsin Open Records Law, such as records of juveniles. Furthermore, the Records Custodian must also conduct a balancing test to determine if the public interest in withholding information in a record outweighs the strong interest in disclosure of public records.

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 City 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 City of Sturgeon Bay Ordinances and applicable state and federal laws.

- C. All releases of records derived from the Department of Motor Vehicles shall be in writing.

IX. PROTECTED INFORMATION IN CIRCUIT COURT RECORDS

Effective July 1, 2016 pursuant to the Wisconsin Supreme Court adopting WI Statute § 801.19, Circuit Court records may no longer contain protected information. This includes social security numbers, employer or taxpayer identification numbers, a financial account number, a driver's license number, or a passport number.

- A. Although electronic citations generally contain the driver license number of the defendant, TraCS users do not need to redact the driver license number from a citation when it is electronically filed with the court. CCAP will mask the DL field from public view in the court file, and on any copies made by the Clerk of Circuit Court. See below for which documents may be submitted through TraCS without redaction.
- B. If you submit paper citations to the court, you will need to comply with the new statute. You should leave the DL off the citation or blank it out. If the court needs the DL for this matter, you should submit it separately on the Confidential Disclosure of Protected Information form, GF-241. This form will be posted on the court website on 06/24, at <https://www.wicourts.gov/forms1/circuit/index.htm>.
- C. If you submit other documents to the court, such as the "Notice of Intent to Revoke," those documents will need to be redacted. Submit the DL on the GF-241 if you have not already sent a citation.

Redaction is required for attachments as well. Local forms should be reviewed to make sure protected information does not appear in the public court file.

- D. The new statute is not intended to impede the court's ability to share protected information with authorized agencies. Access to parties and agencies is still allowed as provided by law.
- E. No redaction is needed for the following documents IF they are submitted to the court through TraCS or PROTECT. Law enforcement does not need to submit the number on the GF-241. CCAP will mask the DL from public view, but the court and interface partners will still see it.
1. Wisconsin Department of Natural Resources Citation
 2. Wisconsin Uniform Citation
 3. Arrest Warrant
 4. Bench Warrant

5. Bench Warrant- Civil
6. Failure to Pay Capias
7. Commitment Order
8. Commitment Order Payment Plans
9. Order of Revocation/Suspension
10. Order of Revocation/Suspension- Reinstatement
11. Conviction Status Report
12. Court Order for Intoxicated Driver Assessment and Driver Safety Plan

F. Redaction is needed for the following documents. Law enforcement should submit the DL on the GF-241 if it hasn't already been provided to the court.

1. Notice of Intent to Revoke
2. Paper citations police departments and local regulatory violations
3. Complaints and attachments to complaints

Clinton Henry
Chief of Police

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

Initial 06/30/2020