Opinion No. 2013-090

January 13, 2014

The Honorable Jeremy Gillam
State Representative
1825 Missile Base Road
Judsonia, Arkansas 72081-9169

Dear Representative Gillam:

You have requested my opinion on the following questions concerning motor vehicle accident reports:

1. Does a motor vehicle accident report created by an Arkansas law enforcement agency constitute a "registration record" covered by Ark. Admin. Code 006.05.102?

2. May a municipality or law enforcement agency lawfully redact personal information from motor vehicle accident reports under authority granted by Ark. Admin. Code 006.05.102, Ark. Code Ann. 27-14-412(a)(1), the Federal Driver's Privacy Act (18 U.S.C. § 2721), or any other applicable state law or regulation?

RESPONSE

The answer to your first question is "no." Your second question cannot be answered with a simple "yes" or "no." Arkansas Code Annotated §§ 27-53-209 and -305 provide that traffic accident reports made by Arkansas law enforcement officers are open to public inspection. But the federal Driver's Privacy Protection Act ("DPPA," 18 U.S.C. §§ 2721 through 2725) must be considered if a report contains personal information that was obtained from the Arkansas Office of Motor Vehicles ("OMV"). I believe it is debatable, given the protections of the DPPA, whether A.C.A. §§ 27-53-209 and -503 invariably require public

disclosure of unredacted accident reports. As explained further below, however, I cannot definitively opine on the application of this federal law.

Question 1 - Does a motor vehicle accident report created by an Arkansas law enforcement agency constitute a "registration record" covered by Ark. Admin. Code 006.05.102?

As reflected in the following subsection, Ark. Admin. Code 006.05.102 was promulgated in recognition of the federal Driver's Privacy Protection Act:

> Ark. Code Ann. A.C.A. § 27-14-412(a)(1) currently provides that all *records of the Office of Motor Vehicle (OMV) relating to vehicle titles, registration and license plates* are open to public inspection unless otherwise deemed confidential. The Federal Driver's Privacy Act (18 U.S.C. § 2721) which becomes effective on September 13, 1997 generally prohibits the disclosure of personal information from such records in the absence of state procedures providing each vehicle registrant the opportunity to prohibit disclosure of his or her registration information. Because Arkansas law does not currently allow registrants such an opportunity, all personal information contained in the ***registration records*** *as well as identification cards issued by the Office of Driver Services* is prohibited from release except for permissible uses listed below.[1]

The term "registration records" at the end of this subsection plainly refers to the Arkansas "Office of Motor Vehicle (OMV)" records "relating to vehicle titles, registration and license plates" that were referenced in the first sentence. The nondisclosure requirement with respect to such records is consistent with the federal Driver's Privacy Protection Act ("DPPA"), which regulates the disclosure of personal information (as defined under the DPPA) contained in state motor vehicle records.[2]

Arkansas vehicle accident reports are not filed with the state Office of Motor Vehicle. These reports are prepared by state, county, and municipal law

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[1] AR ADC 006.05.102 1.(a) (Sept. 9, 1997) (emphasis added).

[2] *See Maracich v. Spears*,___ U.S.___, 133 S. Ct. 2191, 2195 ("The DPPA regulates the disclosure of personal information contained in the records of state motor vehicle departments (DMV's)."); *Cook v. ACS State & Local Solutions, Inc.*, 663 F.3d 989, 992 (8th Cir. 2011); *Reno v. Condon*, 528 U.S. 141, 143 (2000).

enforcement officers, who are charged with investigating and reporting all traffic accidents within their jurisdictions,[3] and filed with the Arkansas State Police.[4] Accordingly, they are not "registration records" under Ark. Admin. Code 006.05.102.

Question 2 - May a municipality or law enforcement agency lawfully redact personal information from motor vehicle accident reports under authority granted by Ark. Admin. Code 006.05.102, Ark. Code Ann. 27-14-412(a)(1), the Federal Driver's Privacy Act (18 U.S.C. § 2721), or any other applicable state law or regulation?

I cannot offer a definitive response to this question. I can opine generally that traffic accident reports made by Arkansas law enforcement officers are open to public inspection under A.C.A. § 27-53-305 (Repl. 2010).[5] The laws cited in your question do not expressly require or provide for the redaction of any information from these reports. Nor am I aware of any other general law to that effect.

Your question, however, requires some consideration be given to the limitations under the DPPA with respect to the disclosure and use of information contained in state motor vehicle records.[6] I am unable, for the reasons explained below, to definitively opine on this federal law's applicability to your question. This opinion must be limited, instead, to a discussion of the general framework for evaluating the potential applicability of the DPPA.

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[3] A.C.A. § 27-53-303 (Repl. 2010).

[4] *Id*. at (c).

[5] *See also* A.C.A. § 27-53-209 (Repl. 2010) (applying specifically to "motor vehicle accident reports made by the Department of Arkansas State Police," requiring that such reports "shall be open to public inspection at all reasonable times"). Police accident reports are also generally open to the public under the Arkansas Freedom of Information Act (A.C.A. §§ 25-19-101 – 110). *See* Op. Att'y Gen. Nos. 98-061 and 96-070.

[6] The DPPA was passed by Congress in response to concerns about mass marketing and crimes connected to the release of personal information from state departments of motor vehicles. *Maracich*, 133 S. Ct. at 2193; *Cook*, 663 F.3d at 992. The DPPA plainly overrides inconsistent state law provisions. *See Collier v. Dickinson*, 477 F.3d 1306, (11th Cir. 2007); *Rios v. Direct Mail Express, Inc.*, 435 F. Supp. 2d 1199 (S.D. Fla. 2006); *State ex rel. Oklahoma Dep't of Public Safety v. United States*, 161 F.3d 1266 (10th Cir. 1998); *Travis v. Reno*, 163 F.3d 1000 (7th Cir. 1998). *See also* Op. Att'y Gen. 99-343 (noting that Congress presumably has the authority "to preempt contrary state legislation, including the FOIA").

As noted above, Ark. Admin. Code 006.05.102 is the counterpart to the federal DPPA. Both this regulation and A.C.A. § 27-14-412(a)(1) recognize that the DPPA limits and regulates disclosure of personal information in the records of the Arkansas Office of Motor Vehicle (hereinafter "OMV"). The DPPA begins with a general restriction on the disclosure of information by state motor vehicle departments:

> (a) In General. — A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:
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> > (1) 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, except as provided in subsection (b) of this section….[7]

Section 2725(3) defines "personal information" as follows:

> "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.[8]

The DPPA is thus concerned with personal information contained in department of motor vehicle records, including those of the Arkansas OMV.[9] Subsection 2721(a) regulates disclosure of such information by the OMV. Disclosure by the OMV is prohibited unless for a purpose listed in subsection 2721(b). As stated by one court, "[t]he DPPA is structured such that § 2721(a) provides the general prohibition on release and use of motor vehicle information, and § 2721(b) enumerates fourteen specific exceptions to the general prohibition."[10] Another

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[7] 18 U.S.C. § 2721 (2013). "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) (2000).

[8] 18 U.S.C. § 2725(3) (2013).

[9] *Accord* Maureen Maginnis, *Maintaining the Privacy of Personal Information: The DPPA and the Right of Privacy*, 51 S.C. L. Rev. 807, 810 (2000).

[10] *Pichler v. UNITE*, 542 F.3d 380, 394–95 (3d Cir. 2008).

subsection of 18 U.S.C. § 2721 then regulates re-disclosure by the recipient of information from the OMV. Another court has summarized these subsections as follows:

> Section 2721 … begins with a general restriction on the release of information *by a state DMV*[.]…18 U.S.C. § 2721(a). Subsection (b) defines various exceptions to which we shall return in some detail. If an exception in subsection (b) permits disclosure by a state DMV to a specific second party, subsection (c) then regulates the separate activity that occurs when the *recipient* of a record from the DMV is responsible for a secondary disclosure to a third party. Specifically, subsection (c) allows for authorized recipients to "resell or redisclose the information only for a use permitted under subsection (b)," with further exceptions and requirements that need not detain us. [Footnote omitted.] Both subsections (a) and (c), therefore, regulate a particular kind of disclosure and direct the details of that regulation to subsection (b).[11]

This statutory scheme is potentially relevant to your question concerning the redaction of personal information from accident reports. It seems that the threshold question in determining the DPPA's relevance is whether the information was obtained from the OMV. This approach is consistent with several previous opinions of this office, as well as the relatively few cases that have addressed the DPPA's limitations on disclosure of personal information. In addressing the release of a driver's license from a public agency's employment file, my immediate predecessor opined that "the [DPPA] will apply in this case only if the [agency] obtained the copies of the driver's licenses from the Department of Motor Vehicles."[12] I have similarly opined to that effect.[13] The

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[11] *Senne v. Village of Palatine*, 695 F.3d 597, 602 (7th Cir. 2012) (en banc) (emphasis original), *cert. denied*, 133 S. Ct. 2850 (June 24, 2013).

[12] Op. Att'y Gen. 2005-194 (citing 18 U.S.C. § 2721(a) and *O'Brien v. Quad Six, Inc.*, 219 F. Supp. 2d 933 (N.D. Ill. 2002)).

[13] Op. Att'y Gen. 2008-138. This opinion, like many others issued by this office, mentions the DPPA in the process of addressing a request for personnel records under the Arkansas Freedom of Information Act (FOIA). The opinions say that custodians should redact driver's license numbers or photocopies of driver's licenses from such records. *See, e.g.*, Op. Att'y Gen. Nos. 2011-078; 2008-046; 2007-025; 2006-182; 2001-314; 99-016. The reference to DPPA in the context of personnel records may be understandable in light of the test for releasing such records under the FOIA, which requires balancing the individual's privacy interest against the public's interest in disclosure. A.C.A. § 25-19-105(b)(12) (Supp. 2011). The

case cited in these opinions, *O'Brien v. Quad Six, Inc.*, held that the DPPA does not apply to the dissemination of personal information obtained from a private party.[14] Although there are no Arkansas cases, courts from several other jurisdictions have also held that the DPPA only applies if a state motor vehicle agency was the source of a driver's personal information.[15]

I have no information regarding any accident reports at issue under your question, but the above discussion leads me to conclude that redactions are generally impermissible with respect to reports containing no personal information obtained from the OMV. In my opinion, such reports are open to the public under A.C.A. § 27-53-209, A.C.A. § 27-53-305, and the FOIA.

A question may arise under the DPPA, however, regarding public disclosure of an accident report containing personal information (as defined by the DPPA) that was obtained from the OMV.[16] The DPPA makes it unlawful "for any person

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DPPA may support the proposition that the individual has a substantial interest in keeping confidential the information set forth on a driver's license. Given that the public interest in obtaining this information is negligible, the privacy interest must prevail under the FOIA's balancing test with respect to personnel records. *Accord* Op. Att'y Gen. 2005-194.

I note, however, that a number of opinions issued by this office say the DPPA requires that the driver's personal information be kept confidential, with no mention of whether the information was obtained from the Office of Motor Vehicles. *E.g.* Op. Att'y Gen. Nos. 2008-046; 2005-113; 2003-257; 2003-115; 2001-080; 99-016. It nevertheless seems clear from the few cases offering guidance in this area that the DPPA is inapplicable if the personal information was not obtained from a state motor vehicle agency. I will therefore take this opportunity to say that opinions of this office that mention the DPPA are incorrect to the extent they suggest the DPPA requires redactions from personnel or other records regardless of the source of the personal information.

[14] 219 F. Supp. 2d at 935.

[15] *Hurst v. State Farm Mutual Automobile Insurance Company*, 2012 WL 426018 (D. Del. Feb. 9, 2012); *Best v. Bernard*, 837 F. Supp. 2d. 933 (N.D. Ill. 2011); *Ocasio v. Riverbay Corporation*, 2007 WL 1771770, *5-6 (S.D.N.Y. June 19, 2007). *See also Atlas Transit, Inc. v. Korte*, 249 Wis. 2d 242, 638 N.W.2d 625 (2001) (holding that the DPPA did not prohibit a school district from releasing personal information on bus drivers employed by private bus companies under contract to provide transportation for the district, where the information on the drivers was collected by the private employer).

[16] As you can see from the "personal information" definition set out above, the DPPA does not provide any protection for "information on vehicular accidents." This might at first glance be read as authority for releasing accident reports pursuant to the Arkansas statutes. It is apparent upon further review, however, that this is an improper reading. As stressed by the U.S. district court in *Camara v. Metro-North Railroad Company*, 596 F. Supp. 2d 517 (D. Conn. 2009), Congress' intent under the DPPA was to foreclose the release through department of motor vehicle records of information that might be used to promote criminal activity. Specifically, the court noted:

knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title."[17] A person "who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains."[18] It thus appears that the answer to the question you have posed regarding redactions from accident reports may depend on whether the disclosure of personal information included in such reports serves a purpose identified by the DPPA.

I must qualify this discussion of the DPPA because case law interpreting this federal law is relatively limited, and my research has yielded no reported decision on this precise question involving law enforcement accident reports. I therefore cannot predict with any certainty how a court in our jurisdiction would approach the issue. I have agreed with my predecessor that public records containing personal information obtained from the OMV cannot be disclosed pursuant to the FOIA without making redactions because such disclosure would be a redisclosure under subsection 2721(c) of the DPPA, and "conspicuously absent among the permissible uses itemized in [this subsection] is disclosure pursuant to a state FOIA request."[19] I believe the issue is potentially less clear, however, with respect to redactions from accident reports.

> Congress intended to prevent crimes enabled by easy access to state-verified personal information. *See, e.g.,* 140 Cong. Rec. H2518-01 (statement of Rep. Goss) ("The intent of [the DPPA] is simple and straightforward: we want to stop stalkers from obtaining the name and address of their prey . . . ").

Id. at 525. Even conceding that an accident report as such is excluded from the category of "personal information," it would be contrary to Congressional intent to read this definitional exclusion as in itself mandating the release, upon any request, of all information contained in an accident report. Rather, the DPPA's exclusion of "information on vehicular accidents" from "personal information" appears bounded by a condition that the public may access vehicular accident information only on an *individualized basis* – i.e., that absent an applicable exception under the DPPA, *state-verified* "personal information" will remain confidential in an otherwise accessible document when disclosure might reveal a potential victim's identity. Hence Connecticut's system, in recognition of this restriction, prohibits a requester from obtaining another person's driver history without first providing the department of motor vehicles with the driver's name, license number, address and date of birth. 596 F.Supp.2d at 525.

[17] 18 U.S.C. § 2722(a) (2000).

[18] 18 U.S.C. § 2724(a) (2000).

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[19] Op. Att'y Gen. 2008-138 (citing Op. Att'y Gen. 2005-194). Subsection 2721(c) states in relevant part that "[a]n authorized recipient of personal information … may resell or redisclose the information only for a use permitted under subsection (b)…." 18 U.S.C. § 2721(c) (2000). Subsection (c) further imposes

As noted above, the DPPA sets out a number of exceptions to the general prohibition against the release of personal information from a department of motor vehicles. One of those exceptions permits disclosure "*[f]or use by any* government agency, including any court or *law enforcement agency, in carrying out its functions*."[20] The DPPA does not specify what activities constitute the "carrying out" of "law enforcement functions." As one court has observed, however, according to its legislative history, this subsection "'provides law enforcement agencies with latitude in receiving and disseminating this personal information,' when it is done 'for the purpose of deterring or preventing crime or other legitimate law enforcement functions.'"[21] Arkansas law enforcement agencies undoubtedly perform a legitimate law enforcement function when they discharge their statutory duty to investigate and report traffic accidents.[22] I believe it reasonably follows that they generally can obtain and use personal information for these purposes.[23] To the extent an accident report contains personal information that was obtained from OMV, however, I believe it is debatable whether public release of the report in an unredacted form constitutes a permissible disclosure under the DPPA.

At issue in that debate is the precise scope of the DPPA's law enforcement function exception. As stated by one court, "[a] law enforcement agency may use protected personal information so long as the agency is 'carrying out' a 'law enforcement function.'"[24] It seems relevant to note in this regard that accident

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certain record-keeping requirements with respect to such re-disclosure. Subsection 2721(b) sets out fourteen "permissible uses" covering a range of purposes and recipients, none of which includes release under a state FOIA.

[20] 18 U.S.C. § 2721(b)(1) (emphasis added).

[21] *Senne*, 695 F.3d at 608 (quoting 139 Cong. Rec. S15,962 (daily ed. Nov. 17, 1993) (statement of Sen. Thomas Harkin, emphasis omitted).

[22] *See* A.C.A. § 27-53-303(a), (c) ("[L]aw enforcement officers of Arkansas are declared to be responsible for the investigation and reporting of all traffic accidents…" and "[T]he investigation officers shall file the report with the Department of Arkansas State Police within five (5) days….").

[23] *Compare Smythe v. City of Onamia*, 2013 WL 2443849, *6 (D. Minn. June 5, 2013) (noting that "[w]ith the exception of misuse, the DPPA's legislative history indicates a desire to preserve broad discretion for law enforcement agents to retrieve information in the course of their duties"); *McQuirter v. City of Montgomery*, 2008 WL 401360, *5 (M.D. Ala. Feb. 12, 2008) (no DPPA violation where police office retrieved driver's license records in order to complete the process of an arrest, which included using the information when reporting to supervisory personnel).

[24] *Parus v. Kroeplin*, 402 F. Supp. 2d 999, 1006 (W.D. Wisc. 2005) (citing *Mechler v. Hodges*, No. C-1-02-948, 2005 WL 1406102 at *7 (S.D. Ohio June 15, 2005) (finding no DPPA violation where use and

reports in Arkansas must, in addition to describing the accident itself, disclose the persons and the vehicles involved:

> "Traffic accident report" means the written report required of the investigating officer, including any later supplements, which describes the site, location, and manner of occurrence of the accident, the persons and vehicles involved, and any other pertinent data that may be useful in the determination of the causes of the accident.[25]

Identifying the persons involved is thus part of the statutory reporting requirement. It reasonably follows, as indicated above, that the use of personal information when preparing the report generally constitutes a permissible use under the DPPA's law enforcement exception. It is the specific duty of law enforcement offices, moreover, to make the accident reports "open to public inspection at all reasonable times."[26] The General Assembly has therefore not only imposed a duty on law enforcement to create accident reports that identify those involved, but has further directed that such reports be available to the public. A proponent of the position that accident reports are open to the public under A.C.A. §§ 27-53-209 and -305 with no redaction of personal information might argue, based upon these duties, that the release is a function of law enforcement and hence a permissible use under subsection 2721(b)(1).[27] The DPPA's legislative history might be cited in further support of this reasoning. In the words of one of my colleagues: "Legislative history further indicates that the scope [of § 2721(b)(1)] should not be

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disclosure of social security numbers was in conjunction with duties of law enforcement agency and its attempt to verify identity of a suspect.).

[25] A.C.A. § 27-53-302(3) (Repl. 2010). *See also* A.C.A. § 27-53-206(a)(2)(A) (Repl. 2010) ("The reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.").

[26] A.C.A. §§ 27-53-209 and -305(a).

[27] *Cf.* Wis. Op. Att'y Gen. 1-02-08, 2008 WL 1970575, *5 (April 29, 2008) (opining that disclosing personal information in response to a public records request is not the type of re-disclosure covered by subsection 2721(c) of the DPPA). *Compare* 49 Or. Op. Att'y Gen. 127, 1998 WL 665882, *6 (Sept. 18, 1998) ("To the extent a government agency's functions require that agency to provide information to someone other than a government agency, we believe a court would conclude … that the agency's action was not a "redisclosure" prohibited by 18 U.S.C. § 2721(c). Rather, such an action should be a necessary element of carrying out that agency's functions and therefore a permitted use under 18 U.S.C. § 2721(b)(1).").

narrowly drawn, so as not to impede the abilities of law enforcement … to carry out their duties…."[28]

If this reasoning is correct, then there would appear to be no basis for redacting personal information from accident reports.

On the other hand, a more restrictive reading of DPPA's exceptions could lead to the conclusion that redactions are necessary. The Seventh Circuit's ruling in *Senne v. Village of Palatine*[29] bears noting in this regard. This case involved a police officer's placement of a parking ticket on a car windshield. The ticket included the owner's personal information obtained from the state department of motor vehicles. The Seventh Circuit ruled that the placement of the protected information in the public view constituted a disclosure regulated by the DPPA. The court found that the DPPA does not provide unlimited authority for law enforcement to access or disseminate personal information. It gave a narrow reading to the law enforcement exception and stressed that the DPPA allows such information to be released only "for use" within the act's enumerated exceptions.[30] In the words on one commentator, the Seventh Circuit determined that "the disclosure [of personal information] must align with the exception's purpose…."[31] As further explained by this commentator:

> The court reached its determination as follows. Sections 2721(b)(1) and (4) both begin with the words "for use." Honoring the statutory construction principle that meaning must be given to every word, the court determined "for use" performed "a critical function" in the statute. "For use" contained "the necessary limiting principle" to the exceptions in § 2721(b)(1) and (4). In authorizing a disclosure "for use," Congress intended that the information disclosed be used only for the purpose identified in the exception. When disclosed

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[28] *Id*. (citing *Parus*, 402 F. Supp. 2d at 1006). The court in *Parus* noted that "the DPPA was not intended to restrict or hinder law enforcement and crime prevention strategies even if those strategies might include releasing personal information to the general public." *Id*.

[29] *Supra* n. 11.

[30] 695 F.3d at 606.

[31] Christopher P. Keleher, *Senne v. Village of Palatine or How a $20 Parking Ticket Became an $80 Million Liability*, 56 APR Res Gestae 10, * 14 (April, 2013). The author of this article criticizes the court's reading of the DPPA: "The DPPA says nothing about what information is appropriate or necessary." *Id*. at *16. The author also notes that "the court provided no clear standard for determining what "exceed[s] the scope of the authorized statutory exception." *Id*.

> information does not effectuate the exception's purpose, neither § 2721(b)(1) nor (4) will apply.[32]

The idea that the use of the personal information must serve the particular exception draws some support from *Maracich*,[33] which answered the narrow question whether disclosure of personal information from a department of motor vehicles to attorneys seeking information to solicit clients for a lawsuit falls within subsection 2721(b)(4) of the DPPA (the litigation exception). This exception permits the use of personal information "in connection with" judicial and administrative proceedings, including "investigation in anticipation of litigation." The Court searched for a "limiting principle" in interpreting the subsection, noting that it is "an exception to both the DPPA's general prohibition against disclosure of 'personal information' and its ban on release of "highly restricted personal information."'[34] The Court reviewed the examples of permissible litigation uses under the subsection and found "[t]he examples suggest that the litigation exception has a limited scope to permit the use of highly restricted personal information when it serves an integral purpose in a particular legal proceeding."[35]

It seems that under a more narrow reading of subsection 2721(b)(1), the public disclosure of personal information in a traffic accident report must be appropriate or necessary for carrying out the law enforcement function attending such reports. That function involves investigating and reporting accidents with a purpose to "promote the public welfare by the reduction of traffic accidents and deaths, injuries, and property damage…."[36] The connection between this purpose and the public release of personal information may be tenuous at best. Stated differently, it may be highly questionable under a more restrictive reading of § 2721(b)(1) whether public disclosure of an accident report containing personal information is useful in carrying out the law enforcement function.[37] This reading may thus lead

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[32] *Id*. (footnotes omitted). Subsection 2712(b)(4) of the DPPA permits disclosure of personal information for an "administrative or arbitral proceeding." This exception was implicated in *Senne* because the case involved a parking ticket that constituted service of process under Illinois law.

[33] *Supra* n. 2.

[34] 133 S. Ct at 2200.

[35] *Id*. at 2202.

[36] A.C.A. § 27-53-301 (Repl. 2010).

[37] This is particularly the case if the disclosed information is "highly restricted personal information." The DPPA's law enforcement exception is one of the four permissible uses for which not only personal information, but also "highly restricted personal information" may be disclosed. *See* 18 U.S.C. §

to the conclusion that redactions are not only permissible, but are necessary in order to comply with the DPPA.

In sum, I believe it is debatable, in light of the DPPA, whether A.C.A. §§ 27-53-209 and -503 invariably require public disclosure of unredacted accident reports. But the absence of any definitive case law prevents me from opining further on the issue.[38] I will note that the uncertain state of the law may explain any reluctance on the part of custodians to release personal information obtained from the OMV, particularly given the significant potential liability in a DPPA case.[39] I cannot definitively opine, however, on the application of this federal law. It seems the question may ultimately require resort to the courts for resolution.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Elisabeth A. Walker.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh

2721(a)(2) (2013). The latter is defined as "an individual's photograph or image, social security number, [and] medical or disability information."[37] 18 U.S.C. § 2725(4) (2013). In the event an accident report contains this information, it seems unlikely that public disclosure of such information would be a permissible use under § 2721(b)(1).

[38] The question appears to be at issue in a case arising out of Wisconsin that is currently before a federal magistrate on a motion to remand to state court. In *New Richmond News v. City of New Richmond*, 3:13-cv-00272 (W.D. Wis., filed April 23, 2013), the newspaper alleges the city violated Wisconsin's open records law by redacting names and other personal information from law enforcement reports related, in part, to vehicular accidents. The city, citing *Senne, supra*, had concluded that the release of unredacted motor vehicle accident reports potentially violated the DPPA. The newspaper asserts the city is misinterpreting the DPPA and the Seventh Circuit's ruling. You may wish to follow the progress of this case, since it appears to be on point regarding the redaction of personal information from motor vehicle accident reports. Obviously, however, this case will not provide binding precedent in Arkansas.

[39] *See* 18 U.S.C. §§ 2724(a) ("A person who knowingly obtains, discloses or uses personal information from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.").