

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL NO. 10-17863-CI-13

TIMES PUBLISHING COMPANY,
a Florida corporation,

Petitioner/Plaintiff,

Vs.

CITY OF KENNETH CITY, a municipal
corporation of the State of Florida and
AMERICAN TRAFFIC SOLUTIONS, INC.,
a Kansas corporation,

Respondents/Defendants.

ORDER REQUIRING PRODUCTION

On the surface this case merely involves a request by the TIMES PUBLISHING COMPANY for the names of people involved in red light violations, however, the issues presented by KENNETH CITY'S refusal to produce the information have much broader implications. At the heart of the dispute is a collision between Florida's Public Records Law and a federal statute known as the Drivers Privacy Protection Act. It is necessary for this court to consider the legal question resulting from these circumstances in terms of its general application because the decision here will not be limited to a narrow set of facts involving traffic tickets.

The scope of the matter the court is called upon to decide can be better understood by stating the question as follows:

TO WHAT EXTENT DOES THE DRIVERS PRIVACY
PROTECTION ACT LIMIT THE PUBLIC'S RIGHT
TO INFORMATION REGARDING THE PROSECUTION
OF ALLEGED VIOLATIONS OF LAW THAT WOULD
OTHERWISE BE ACCESSIBLE PURSUANT TO FLORIDA'S
PUBLIC RECORDS STATUTE?

The relevant facts are not disputed and there are several threshold matters that merit comment. Although there are two Respondents/Defendants named in the action, it is uncontroverted that AMERICAN TRAFFIC SOLUTIONS, INC. is acting as and for the city. There is no legal distinction between them in regards to the issues presented here. Therefore, in the rest of this order these two parties will be considered together and for convenience of the broader analysis will be referred to as LAW ENFORCEMENT. There is no question that the TIMES PUBLISHING COMPANY has made a request for information in conformity with Florida's Public Records Law and this request could have been made by any citizen without the necessity of revealing their purpose. Again, to focus on the larger implications of this ruling, the court will refer to the Petitioner as the PUBLIC.

The requested information is for the names of people being investigated and prosecuted for violations of a traffic statute. Although this might be considered a minor non-criminal infraction, there is no apparent reason to differentiate this violation from any criminal offense when considering the broad issue herein. The individuals who are charged with red light violations, whether it be by the informal "notice" document or the more formal "citation" shall be referred to as DEFENDANT(S).

It is undisputed that LAW ENFORCEMENT is performing an official function and is following the procedures implemented by the Mark Wandall Traffic Safety Act to prosecute red light violations. In doing so data is obtained from various state departments of motor vehicles, DMV(s), which is used in the furtherance of the prosecution. Some of the data received from the DMV(s) is personal information that is subject to specific disclosure prohibitions under the federal Drivers Privacy Protection Act (DPPA). The parties agree that the United States Supreme Court has determined the DPPA restrictions on the states is constitutional and that F.S.

119.0712(2) includes its exemptions. There is no question that the initial disclosure by the DMV(s) of this personal driver information to LAW ENFORCEMENT for use "in carrying out its functions" is lawful under the DPPA. There is doubt, however, about the impact the DPPA prohibitions have on the prosecution of these cases and ultimately the public's right to know about it.

LAW ENFORCEMENT, in an abundance of caution, has refused to respond to the PUBLIC'S request for information which would require them to reveal the identity of the DEFENDANTS. LAW ENFORCEMENT indicates that the vehicle owners names were obtained from the DMV(s) and that the DPPA specifically indicates the "name" of an individual is protected personal information. It is asserted that that response to the PUBLIC'S requests might constitute a prohibited "redisclosure" under the DPPA which could expose LAW ENFORCEMENT to civil and criminal sanctions.

If this court was to accept the argument that the federal law prevents the revelation of the DEFENDANTS' names in this case the ruling would lead to absurd and unintended results. In any case where a suspect is identified and prosecuted based upon a vehicle tag number being connected to a name through DMV records such a ruling would mean the accused person's name could not be revealed at any stage. This would include a bank robber whose tag was recorded on a parking lot security camera. It would apply to a murder case where the killer's license was remembered by a witness. Since there are no specific limitations on the prohibitions in the DPPA regarding the seriousness of the offense or the stages in the prosecution process this identity exclusion argument would compel a "John Doe" arrest warrant, a trial of an unnamed defendant and even a prison sentence without public revelation of the convict's actual name.

This judge perceives that the specific provisions of the DPPA cannot be construed in this way. To do so not only defies common sense and logic but it also creates a conflict between the acts provision and its purpose.

Ironically, the DPPA was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 not some general privacy legislation. Several cases have reviewed the legislative history and indicate the DPPA was in response to reports of crimes committed by criminals who obtained their victims home addresses from DMV records. Detailed references to quotes from the Congressional Record can be found in Margan v. Niles, 250 F.Supp.2d 63 (N.D.N.Y. 2003) and Camara v. Metro-North Railroad Company, 596 F.Supp.2d 517 (D. Conn. 2009). In Margan the succinct observation of Representative Goss on the subject is quoted as:

...the intent of this bill is simple and straightforward we want to stop stalkers from obtaining the names and addresses of their prey before another tragedy occurs...

With this historical perspective it is easier to understand the interaction of the various subsections of the DPPA and the meaning of the term "redisclosure".

It should be obvious that Congress wanted law enforcement and the courts to be able to get on with their work. This is after all part of a crime control act. The very first disclosure exception in the DPPA is Section 2721(b)(1) authorizing the use of this DMV information by law enforcement and the courts. Even though Section 2721(c) seeks to prevent an improper "resale or redisclosure" of information, there is no indication anywhere in the law or legislative history that remotely suggests revelation of a defendant's identify during a prosecution might be considered a problem.¹¹ There is, however, clear evidence that the law was not intended to shield people from public access to information about their traffic infractions.¹² The definitional section of the DPPA specifically excludes information regarding a driver's vehicular accidents and

driving violations. Subsection 2721(b)(4) furthers the notion that the law is not intended to create impediments to the traditional lawful dispute resolution process. It authorizes the use of the protected DMV information in a wide variety of litigation.

The term "redisclosure" is nowhere specifically defined in the DPPA or any case law discovered by the court. Generally words in statutes should be given their plain and ordinary meaning unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Lee County Elec. Co-op, Inc. v. Jacobs, 820 So.2d 297 (Fla. 2002). Giving this word a common definition suggests it applies to a revelation or divulgence which occurs again after an initial disclosure. As discussed above, if this ordinary meaning is applied to prohibit any identification of DEFENDANTS during the prosecution of a case it causes unreasonable results which are contrary to the DPPA'S purpose. Therefore, it seems apparent that a narrower meaning must have been intended.

The court finds that the lawful and necessary use of personal information by LAW ENFORCEMENT includes the publication of the name of a DEFENDANT or DEFENDANTS even though it was initially obtained from DMV records. This kind of disclosure does not constitute a "redisclosure". The Florida Attorney General reached a similar conclusion in AGO 2010-10 which indicated that once the protected information is received by local law enforcement "and used in the creation of new records" the data "is no longer protected by the DPPA or section 119.0712(2), Florida Statutes."

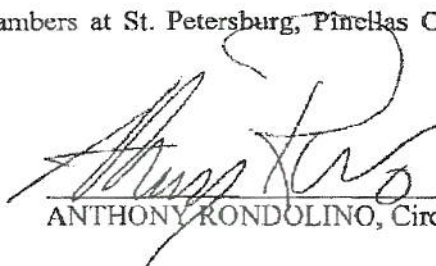
This reasoning applies to the names of suspected red light violators in this case regardless of whether the record is created in the initial investigation stage of the prosecution process or after the case has been closed by payment of the fine. The CITY OF KENNETH CITY and

AMERICAN TRAFFIC SOLUTIONS, INC. shall therefore respond to the public records request of the TIMES PUBLISHING COMPANY, without delay.

On the issue of attorney fees and costs the court finds the Respondents/Defendants acted reasonably and out of legitimate doubt as to their obligations under the law. It was evident that the DPPA prohibitions could apply to a redisclosure and subject the Respondents/Defendants to liability. The potential damages in such circumstances can be substantial. In fact, although it is not revealed in the reported cases, the State of Florida settled a DPPA class action lawsuit for \$10.4 million after the federal courts sustained the viability of the claim. See Government Data Breaches, 24:3 Berkeley Technology Law Journal 1019, 1029 (2009). There was even a case from another jurisdiction that indicated revealing the names of "red light camera" violators would be a DPPA violation. See Wernhoff v. District of Columbia, 887 A.2d 1004 (D.C. 2005). The claim for fees and costs must therefore be denied pursuant to New York Times v. PHH M. Health Services, Inc., 616 So.2d 27 (Fla. 1993).

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida this

26th day of January, 2011.


ANTHONY RONDOLINO, Circuit Judge

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