

Motor vehicle records, release of personal information

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Subject:

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Mr. Fred O. Dickinson
Executive Director
Department of Highway Safety and
Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399-0500

Dear Mr. Dickinson:

You have asked whether the exception in section 119.0712(2), Florida Statutes, which allows an attorney to obtain personal information from motor vehicle records for use in connection with an investigation in anticipation of litigation, applies when the attorney intends to use the information to solicit potential plaintiffs for the purpose of pursuing a class action against a motor vehicle manufacturer, importer, or distributor.

According to your letter the department has been contacted by an attorney requesting the department's electronic data on motor vehicle titles and registrations for particular makes of vehicles in particular counties. The attorney currently represents one or more clients with respect to their ownership of a particular model vehicle. The purpose of this request, and others your department has received, is to use the information obtained to send mass mailings to persons who have purchased certain types of vehicles soliciting them to participate in class actions against vehicle manufacturers, importers, or distributors for alleged defects in these vehicles. You are concerned because Chapter 119, Florida Statutes, provides exemptions from the public records law for certain motor vehicle records.

Section 119.0712, Florida Statutes, provides specific exemptions for designated executive branch agencies from the inspection and copying requirements of the Public Records Law. Subsection (2) contains exemptions for information maintained by the Department of Highway Safety and Motor Vehicles:

"Personal information contained in a motor vehicle record that identifies the subject of that record is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution except as provided in this section. Personal information includes, but is not limited to, the subject's social security number, driver identification number, name, address, telephone number, and medical or disability information. For purposes of this subsection, personal information does not include information relating to vehicular crashes, driving violations, and driver's status. For purposes of this subsection, the term '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

the Department of Highway Safety and Motor Vehicles. Personal information contained in motor vehicle records exempted by this subsection shall be released by the department for any of the following uses:

* * *

(e) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:

* * *

2. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney; however, the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers."

It is a fundamental rule of statutory construction that, where the legislative intent as evidenced by a statute is plain and unambiguous, there is no necessity for any construction or interpretation of the statute and effect need only be given to the plain meaning of its terms.[1] As stated in *Van Pelt v. Hilliard*:^[2]

"The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. Cases cannot be included or excluded merely because there is intrinsically no reason against it. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety, and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts. Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they have plainly expressed, and consequently no room is left for construction. . . ."

The Legislature has expressly provided that certain personal information contained in motor vehicle records must be released by the Department of Highway Safety and Motor Vehicles for use in connection with judicial and administrative proceedings except when it may be used for mass commercial solicitation of clients for litigation against *motor vehicle dealers*. While the statute does not define a "motor vehicle dealer" for purposes of this section, a definition is contained in Chapter 320, Florida Statutes, relating to motor vehicle licenses. Section 320.27, Florida Statutes, requires "motor vehicle dealers" to be licensed to do business in this state and defines the term "motor vehicle dealer," in part, as:

"[A]ny person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles Any person who buys, sells, or deals in three or more motor vehicles in any 12-

month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business." [3]

Separate licensure requirements are contained in section 320.61, Florida Statutes, for motor vehicle manufacturers, distributors, and importers, leading me to conclude that the Legislature identifies these business entities as separate and distinct from motor vehicle dealers. The Legislature has also chosen to define these entities separately in section 320.60, Florida Statutes. [4] These statutory definitions and the common understanding of the phrase "motor vehicle dealer" lead to the conclusion that motor vehicle manufacturers, importers, or distributors are not necessarily included within the scope of the term "motor vehicle dealers" for purposes of section 119.0712(2), Florida Statutes. [5]

Further, the Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. [6] To facilitate public access and openness I must conclude that the meaning of the term "motor vehicle dealers" should be restricted to exclude other entities, with the result that additional records are available for public inspection and copying.

In sum, it appears that section 119.0712(2), Florida Statutes, prohibits the Department of Highway Safety and Motor Vehicles from releasing personal information from motor vehicle records for use in mass commercial solicitation of clients for litigation against motor vehicle dealers, but does not necessarily restrict the release of this information for use in litigation against motor vehicle manufacturers, importers, or distributors. [7]

I would note that this informal opinion is limited to the factual situation you have presented, *i.e.*, the records have been requested by an attorney who currently represents a client for use in connection with litigation. This opinion does not address and should not be understood to comment on a situation in which these records are requested by an attorney who is seeking release of these records for purposes of a bulk solicitation of clients but is not currently representing a client in such a matter. Further, the Legislature may wish to revisit this provision of section 119.0712(2), Florida Statutes, to more clearly express its intent regarding the issues raised by your request.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl

[1] *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973), and authorities cited therein.

[2] 78 So. 693, 694 - 695 (Fla. 1918).

[3] *And see* s. 320.27(1)(c)1 - 3 and 5., Fla. Stat., defining, respectively, the terms "[f]ranchised motor vehicle dealer," "[i]ndependent motor vehicle dealer," "[w]holesale motor vehicle dealer,"

and "[s]alvage motor vehicle dealer."

[4] See s. 320.60(5), (7) and (9), Fla. Stat., defining motor vehicle "[d]istributor;" "[i]mporter," and "[m]anufacturer."

[5] A manufacturer could, for example, also be a wholesale seller of vehicles.

[6] *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2nd DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987).

[7] *And see* s. 119.0712(2)(e)3., Fla. Stat., providing that this information may be released for use in connection with judicial or administrative proceedings for "[i]nvestigation by any person in connection with any filed proceeding; however, the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers."