

VIEWPOINT

Police reports need open records treatment

If last week's headline about Wisconsin police departments blacking out information in police reports was confusing, then it served its purpose. It conveyed the confusion this newspaper and dozens of open records advocates have experienced when they encounter the latest roadblock in serving the people's right to know.

Liability insurance carriers for many state municipalities are encouraging police agencies – including the Milton Police Department – to redact (black out) information from routine police reports that identifies the people involved in an incident before

providing copies of the reports to the public. It doesn't matter if the subject in the police report received a simple speeding ticket or was arrested for a violent crime; you won't find out who they are or where they're from.

It's an absurd notion. The information contained in police reports has long been considered public record. However, it is advice 74 Wisconsin police departments and sheriff's offices have started to follow based on an over-zealous interpretation of recent federal court cases. This growing shadow of government secrecy should be reason for great concern.

What the open records law says

“... it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”

The two federal court decisions – Senne v. Village of Palatine and Maracich v. Spears – involve

the dissemination of personal information obtained through Department of Motor Vehicle records and how they relate to the Driver's Privacy Protection Act.

The DPPA was signed into law by President Bill Clinton in 1994 in response to the death of a 21-year-old California actress, who was shot to death by a stalker who managed to track her using a private detective and Department of Motor Vehicle records.

Since it was enacted, the DPPA has prohibited the disclosure of personal information – such as a home address or driver's license number – obtained through Department of Motor Vehicle

records with few exemptions.

In 2010, Jason Senne sued the Village of Palatine, a northwest Chicago suburb, for a parking ticket he received. The citation had Senne's name, address, driver's license number and other information – all reportedly obtained through the Illinois DMV – listed on it. The Seventh Circuit Court of Appeals (which includes Wisconsin in its jurisdiction) ruled that sufficient evidence existed to support Senne's claim that the ticket, which sat visible to passersby, violated his privacy.

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Spears specifically addressed the way an exemption was used to gain access to DMV records. In this case, trial lawyers submitted several open records requests to the South Carolina DMV seeking names and addresses in order to solicit clients for a lawsuit against several car dealerships. They claimed an exemption within DPPA that allows access to DMV records "For use in connection with any civil, criminal, administrative, or arbitral proceeding," including "investigation in anticipation of litigation." In response, the U.S. Supreme Court ruled, "Solicitation of prospective clients is not a permissible use 'in connection with' litigation or 'investigation in anticipation of litigation' under (b)(4) of the DPPA."

Wisconsin appears to be the only state where these rulings are affecting the release of information from police reports to the press and the public. These cases had nothing to do with access to police reports or the use of information contained within them as a matter of public record. They are separate issues.

The first exemption of the DPPA is very clear. DMV records can be ac-

cessed "For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions."

Responding to public records requests falls within the scope of a police department "carrying out its functions." If police reports are public records, then the information contained within them — including the personal information obtained or confirmed by the DMV — should be considered public information as well.

State Attorney General J.B. Van Hollen has previously commented on this issue and offered the same conclusion. In a 2008 informal opinion, he wrote: "The Wisconsin Public Records Law imposes a statutory duty on law enforcement agencies to respond to public records requests. In the course of carrying out its functions, including responding to public records requests, a law enforcement agency may disclose personal information obtained from DOT that is held by the law enforcement agency."

In July, Van Hollen's office decided to punt instead of standing by his previous stance. Representatives from his office have

What do you think?

Email editor James Debilzen at couriereditor@hngnews.com or call him at 868-2442.

stated they are awaiting the outcome of a lawsuit between the New Richmond News and the City of New Richmond, where the local newspaper alleges its police department is unfairly limiting access to information.

Van Hollen's excuse is a weak one. He knows it could be years before the New Richmond case is put to rest. In the meantime, Wisconsin citizens will be left in the dark about the actions of their own police departments. The uncertainty also puts municipalities in a bad spot.

City of Milton officials have made it clear they believe the information in police reports should be considered public record, but they are left with little choice other than to follow the directives from their insurance carrier for fear of increased premiums or dropped coverage.

The DPPA was intended to limit who has access to DMV records. It was not intended to limit access to police records. We don't

have secret police arresting citizens or writing tickets and then not telling us who is involved.

Despite the Attorney General's reluctance to back up his own statements on this issue, his reasoning in 2008 was and continues to be sound. Nothing in the Senne or Spears cases should have changed those perceptions.

This isn't about a newspaper's ability to scour DMV records for information. The DPPA clearly prohibits that. Rather, this issue pertains to letting police departments do their job. An officer must verify the people they are communicating with are who they say they are, and they often do that by cross-checking a DMV database. They should not have to worry about being sued for violating the DPPA because of an attorney's broad misinterpretation of a couple of court cases or being sued because of allegations they are violating the state's public records law by not providing enough information.

The public's right to know is not served by following the misguided advice of municipal insurance carriers for legal matters that have not been resolved. We urge Wisconsin police agencies to err on the side of openness by following the state's long-standing open records law.