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Some lawmakers say they still get tickets, despite state constitution

Court ruling might open door for making personal info public

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When handing over public records, government agencies routinely censor Social Security numbers, driver's license numbers and sometimes even dates of birth.

A state court ruling this month suggests that often there may be no legal basis for keeping such nuggets of personal information secret.

The court actually made its decision in response to a more narrow question: whether the city of Lakewood properly explained its redaction of driver's license numbers in documents given to public-records activist David Koenig. The Court of Appeals Division II ruled against the city — a decision that, if it stands, could force Lakewood to pay Koenig tens of thousands of dollars.

But a footnote in the ruling could have more far-reaching implications. The three-judge panel, led by Judge Christine Quinn-Brinrnall, expressed concern over what "appears to be an unfortunate oversight" that only the Legislature can address — the lack of an "exemption that impedes the crime of identity theft and protects the release of personal identifying information."

With that declaration, "I think the Court of Appeals opens up pretty much every person in Washington's driver's license number" to public disclosure, said Matt Kaser, an assistant Lakewood city attorney.

He argues that the court failed to see that existing exemptions already shield driver's license numbers from release.

But Michele Earl-Hubbard, a Seattle lawyer who represents news media companies and submitted a friend-of-the-court brief in the Koenig case, says driver's license numbers generally are supposed to be public. Social Security numbers, on the other hand, almost always are protected from release, she said.

The judges' footnote, she said, highlights that there is no blanket protection in the law for personal identification information — but governments can still rely on specific exemptions in the law.

The Legislature should be careful about changing that, she said.

"Every piece of information they take away from the public is taking away part of what we might need to scrutinize our government and understand what it's doing," Earl-Hubbard said.

The footnote could prompt proposals for change. The state public-records panel known informally as the Sunshine Committee plans to discuss the case Tuesday and might make a recommendation to the Legislature, said its chairman, Michael Schwab.

"What the court seems to be saying is, you need to strengthen that and make it very, very clear, and fine-tune it, in a way that does not currently exist," said Schwab, a retired judge. "I would tend to agree with that."

Said another member, Sen. Pam Roach, R-Auburn: "In the age of cyberattacks, there's a huge need to protect information."

But Roach said the panel must balance privacy and transparency, and she suggested a driver's license number is less clear-cut than a Social Security number.

RELEASE LICENSES?

The judges said they were worried about personal information such as "Social Security numbers, driver's license numbers, tax identification numbers, employee numbers, or any other identifying information that would allow a private individual to be identified and subjected to inappropriate scrutiny or harm."

Kaser said license numbers should be protected, noting that the state discloses when such numbers are released because of a security breach.

But Earl-Hubbard said she has seen no proof of such records being put to nefarious use. Identity thieves don't tend to make public-records requests, she said — they hack into computers and dig into garbage cans.

Koenig's lawyer, William Crittenden, said a driver's license number is a unique identifier, like an Internet user name; it is not secret, like an Internet password.

"It tells the world who you are," Crittenden said. "It's not a picture of you naked in the shower."

LONG-RUNNING FIGHT

The Sept. 4 ruling emerged from a yearslong legal fight between Koenig and Lakewood.

Koenig, a Federal Way construction worker who first was denied records in the 1990s related to a crime against his daughter, has since made a crusade out of demanding documents.

He sued Lakewood over its response to one request and won. A judge in 2008 ordered the city to pay about \$40,000 in fees and penalties.

In the middle of that case, Koenig sought more records, and Lakewood took the unusual step of suing him, seeking a court order that it had already complied with his requests. The city says the goal was to keep Koenig from suing at the last possible minute and collecting hundreds of days' worth of daily fines. Koenig's lawyer says it was simply petty retaliation by the city for its earlier defeat.

While a lower court sided with the city, the appeals court ruled Lakewood should pay attorney fees because its records response did not comply with a requirement to briefly explain any redactions.

The city did list the redactions, and it cited the law that it relied upon, a form that is common in responses to records requests. But that isn't enough, the court ruled.

The city could appeal to the state Supreme Court. Kaser said the city is considering its next move.

In the meantime, Crittenden said he filed paperwork Monday asking for \$35,230 from Lakewood to reimburse Koenig for legal fees at the appeals-court level. He also plans to seek legal fees at the trial-court level.

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