WASHINGTON COURTS

Administrative Office of the Courts

**March 8, 2013**

**TO:** Dirk A. Marler, JSD Director

**FROM:** Lynne Alfasso, Legal Services

**RE:** Request to Provide Judicial Information System (JIS) Traffic Infraction Data for Commercial Purposes –- Legal Services Analysis Request

*Caveat.* This legal analysis is intended to assist the Administrative Office of the Courts (AOC) in making policy decisions. The legal analysis is not intended to be relied upon by those outside of the AOC. Further, it is not intended as, nor should it be construed as, a legal opinion in the nature of an Attorney General's Opinion. The official legal advisor for individual courts is the county prosecutor or city attorney, not the Administrative Office of the Courts.

## I. ISSUES PRESENTED

These issues were presented in a memorandum dated February 22, 2013, from Judge Thomas J. Wynne to Callie T. Dietz, State Court Administrator. These issues arise out of a request from a private company, Data Driven Safety, Inc., for an information report consisting of JIS data from traffic infraction cases disposed of in the courts of limited jurisdiction during the last three years.

**A.** Would the release of the JIS traffic infraction database of cases disposed of within the last three years violate federal or state law, including RCW 46.52.130 or 18 U.S.C. 2721?

**B.** Under what terms and conditions, if any, may the information be released?

## II. ANSWERS

**A.** The release of the information by AOC would not violate state or federal law.

**B.** If the information is released, the terms and conditions in the standard agreement approved by the Judicial Information Systems Committee pursuant to GR 31 for the "bulk distribution" of court record information should adequately provide for the security and allowable use of the data, with modifications reflecting that this is a one-time distribution of information and not an ongoing subscription to data.

## III. ANALYSIS

### A. What Information Has Been Requested by Data Driven Safety, Inc.?

Data Driven Safety, Inc. has requested the following data elements from traffic infraction cases which have dispositions entered during the last three years in the courts of limited jurisdiction that use JIS (JIS case type IT):

| |
|---|
| Case Number |
| LEA Code (Law Enforcement Agency) |
| LEA Name |
| Name of Individual |
| Date of Birth (mm/dd/ccyy) (if unavailable = 01/01/1800) |
| Gender |
| Case Type ('IT' = infraction traffic) |
| Jurisdiction Code |
| Jurisdiction Description |
| Violation Date (mm/dd/ccyy) |
| Case Filing Date |
| Case Disposition Code |
| Case Disposition Description |
| Case Disposition Date |
| Driver's License State of Issuance |
| Statute Violated (Charge Information) |

**B. The Release of the Information Would Not Violate State or Federal Law**

**1. RCW 46.52.130 Does Not Prohibit the Courts From Releasing this Information to Data Driven Safety, Inc.**

RCW 46.52.130 governs the release of an abstract of a person's driving record by the state Department of Licensing (DOL).

An "abstract" consists of the following information related to a person's driving history:

a) An enumeration of motor vehicle accidents in which the person was driving;
b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;
c) The status of a person's driving privilege in this state; and
d) Any reports of a failure to appear in response to a traffic citation or notice or infraction.

*RCW 46.52.130(1).*

The statute specifies to whom the DOL may release a person's abstract:

a) The subject of the abstract;
b) Employers or prospective employers (with the subject's consent);
c) Volunteer organizations (with the subject's consent);
d) Transit authorities checking on prospective volunteer vanpool drivers;
e) Insurance carriers may receive an abstract covering the last three years only;
f) Alcohol/drug assessment or treatment agencies may receive an abstract covering the last five years, (but with ten years of alcohol-related offenses);
g) City attorneys and prosecuting attorneys;
h) State colleges, universities, or agencies, or units of local government;
i) Superintendent of public instruction.

*RCW 46.52.130(2).*

RCW 46.52.130 does not apply to the dissemination of information by the courts about information in public court records. The statute applies only to the dissemination of a driver's abstract by the DOL.

Public access to the information in court records is governed by GR 31, which provides for open public access to court records unless restricted by federal law, state law, court rule, court order, or case law. GR 31 (d) (1). Public access to the information in court cases is also governed by a well-developed body of common law, under which the public has a right to inspect and copy court case records. *See Nast v. Michels*, 107 Wash.2d 300, 730 P.2d 54 (1986).

The information requested by Data Driven Safety, Inc. is information found in the JIS record of traffic infraction cases (cases filed as case type IT in the courts of limited jurisdiction.) Traffic infraction cases are not restricted from public access under state law or by court rule. However, it is possible that a specific infraction case may be ordered sealed from public access pursuant to court order under GR 15.

**2. RCW Chapter 46.12 Does Not Prohibit the Release of the Information Requested by Data Driven Safety, Inc.**

RCW 46.12.630 places restrictions on the disclosure of lists of names and addresses of registered and legal vehicle owners by the department of licensing. RCW 46.12.636 places restrictions on the disclosure of names and addresses of individual vehicle owners. The information requested by Data Driven Safety, Inc., does not include parking infraction case information, which is linked to vehicle information; therefore, these statutes do not apply to this request. In addition, parking tickets filed with the

court become public records and are subject to public access for the reasons set forth in section III.B.1, supra.

### 3. 18 U.S.C. 2721 Does Not Prohibit the Courts From Disseminating the Personal Information Requested by Data Driven Safety, Inc.

The Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721 to 2725 (DPPA), restricts the disclosure by state departments of motor vehicles of drivers' "personal information" without the drivers' personal consent, except that the personal information can be disclosed by the state for "permissible uses". "Personal information" is defined in 18 U.S.C. 2725 (3). "Permissible uses" is defined in 18 U.S.C. 2721 (b).

The DPPA applies to the disclosure of information by state departments of motor vehicles, such as DOL. *18. U.S.C. 2721 (a).* While there have been many cases decided under the DPPA reviewing whether or not the release of drivers' personal information was permissible, these cases do not concern the release of personal information by a court. There appear to be no cases under the DPPA that prohibit the release of drivers' information from a public court record by courts.

The personal information which Driver Driven Safety, Inc. has requested from the JIS database is the driver's name and date of birth. That information becomes part of the court case record because it is entered into the citation by the law enforcement agency that issues the traffic citation. A traffic citation filed with the court is a court pleading and is generally considered a public record that may be viewed and copied by the public. ARLJ 9 (a) (1).

In *Graczyk v. West Pub. Corp*, 660 F.3d 275 (7th Cir., 2011), the court upheld the right of a commercial reseller of information to obtain the drivers' personal information and resell it to customers, so long as the customers indicated that they wanted the information for a "permissible use" under the DPPA. A similar holding was reached by the court in *Taylor v. Acxion Corp*., 612 F.3d 325 (5th Cir., 2010). The courts in these two cases did not require that the commercial reseller have a "permissible use" for the information so long as the reseller only distributed the information to customers who stated that they had a "permissible use" for the information.

However, in contrast to *Graczyk* and *Taylor*, in *Locate.Plus.Com, Inc. v. Iowa Dept. of Transp.*, 650 N.W.2d 609 (2002), the Iowa Supreme Court held that the DPPA requires that a commercial reseller must itself have a statutorily-allowed "permissible use" for the information for the reseller to lawfully purchase the information from the state.

A federal appeals court recently held that a municipality's law enforcement agency made an impermissible use under the DPAA of a driver's personal information when a person was given a parking ticket which the city parking officer placed on the vehicle

windshield. The parking ticket displayed the vehicle's registered owner's personal information (name, address, driver's license number, date of birth, sex, height, and weight), which the parking enforcement officer had obtained from the state department of motor vehicles database. *Senne v. Palatine*, 695 F. 3d 617 (7th Cir., 2012). The appellate court held that the municipality had included "too much" personal information on the ticket and, therefore, the exemptions from the provisions of the DPPA which a government agency normally enjoys in carrying out a government function were not applicable.

The municipality has filed a petition for writ of certiorari in the U.S. Supreme Court, which has not yet decided whether it will grant the petition and accept the case for review. This case has caused consternation among municipalities, since the form of the parking citation used by the Village of Palatine to cite Mr. Senn, and the manner in which he was cited, is apparently widely used to enforce parking regulations, and several amici curiae have filed briefs asking the Supreme Court to accept this case for review. (*See* http://www.scotusblog.com/case-files/cases/village-of-palatine-v-senne/.)

Mr. Murphy, the spokesperson for Data Driven Safety, Inc., mentioned a Wisconsin case involving liability imposed for violation of the DPPA that was of interest to Judge Wynne. (*Memorandum from Judge Wynne to Callie T. Dietz dated February 22, 2013.*) That case was *Deicher v. City of Evansville*, a trial court decision that is summarized on page 3, footnote 11, of the November 2012 *Comment* of the League of Wisconsin Municipalities (attached hereto as Appendix 1.) *Deicher* also involved a law enforcement agency; an officer made improper use of a driver's personal information by providing a woman's address, which the officer obtained from state department of motor vehicle records, to the woman's estranged husband.

The personal information which Driver Driven Safety, Inc. has requested from the JIS database is the driver's name and date of birth. That information becomes part of the court case record because it is entered into the citation by the law enforcement agency that issues the traffic citation. If it is a violation of the DPPA for the law enforcement agency to include this information on a citation which the law enforcement agency knows will become a public record, then the law enforcement agency should be liable, for disseminating the information for an "impermissible use", not the court. However, it should be noted that the information requested by Driver Driven Safety, Inc., has been publicly available both at the courthouse and in JIS for many years.

### C. Under What Terms and Conditions Should the Information Be Released?

Data Driven Safety, Inc. has requested traffic infraction case data from cases with dispositions entered during the last three years in the courts of limited jurisdiction. Three years after disposition (or seven years for a case with a deferred disposition) is the

retention period in JIS for the IT case type. (*District and Municipal Court Records Retention Schedule, Section 2.2, Civil Infractions.*)

GR 31 governs access to court records. GR 31 (c) (3) defines "bulk distribution" as the "distribution of all, or a significant subset, of the information in court records, as is and without modification." Data Driven Safety, Inc., is requesting a significant subset of the information in court records on this case type. Therefore, the rules governing the "bulk distribution" of data, which are found in GR 31 (g), should apply to this request. GR 31 (g) states as follows:

> (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.
>
> (2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.
>
> (3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

The contract approved by the JIS Committee for the dissemination of bulk records is set forth as Appendix 2. Since Appendix 2 contemplates a customer who is an ongoing subscriber to JIS data, the provisions will need to be modified for this one-time report for Data Driven Safety, Inc. Some edits have been proposed to the contract provisions, as set forth in Appendix 2:

- The contract in Appendix 2 provides that a subscriber may only use the court data which is the most recent download of information provided by AOC to the customer, to ensure that the subscriber uses the most recent case information which is publicly available. (Paragraph 7.2.6) To ensure that Data Driven Safety, Inc., only uses the case information that is still publicly available, the customer should be required to delete the case information after it is three years old, to be consistent with the JIS retention period for these cases (which Data Driven Safety, Inc., has stated that it is willing to agree to.)

- The Data Dissemination Committee should consider whether or not to require Data Driven Safety, Inc., to update the data which is less than three years old on a quarterly basis, if there is any concern that the dispositions on the cases may be updated by the courts or that cases may be sealed. Paragraph 9 of the

Agreement in Appendix 2 requires the subscription customers to update their data quarterly, and to only use the updated data in responding to requests for information from third-parties.

- The Data Driven Safety, Inc., should pay AOC's programming costs to provide the data, which is a typical requirement for a custom JIS data report.

- Limits should be placed on Data Driven Safety, Inc.'s use of the data which are consistent with the customer's request to the JIS Data Dissemination Committee. For example, the customer has stated it will not be releasing specific case information about individuals to its third-party customers.

- On cases which have been sealed pursuant to court order, only those data elements allowed by GR 15 (c)(4) should be released to Data Driven Safety, Inc.: case number, names of the parties, the notation "case sealed," the case type, and cause of action.

- All other terms and conditions in the contract in Appendix 2 should be included.

## IV. Conclusion

The Data Dissemination Committee has asked whether the release of the traffic infraction case information requested by Data Driven Safety, Inc., will violate any state or federal laws. Release of the requested information will not violate any such laws. By using the Agreement already approved by the JISC for the "bulk distribution" of JIS data, the Data Dissemination Committee will ensure that release of the information is consistent with the policies adopted by the JISC to require that persons who receive JIS data in bulk are responsible in their use of that information and that any risk of liability is borne by the customer and not the state.

Cc: Nan Sullins