



POLICE DEPARTMENT
2100 North Calhoun Road
Brookfield, Wisconsin 53005-5054
(262) 787-3702 Fax (262) 782-8757
Administrative Fax (262) 796-6701

Daniel K. Tushaus, Chief of Police



TO: Requesters of Police Records (Traffic Crash Reports, Incident Reports, etc.)

FROM: Dean J. Collins
Assistant Chief of Police

RE: **Federal Driver Privacy Protection Act and Wisconsin's Public Records Law**

DATE: May 13, 2016

As a result of a 7th Federal Circuit Court of Appeals decision, *Senne v. Village of Palatine, Il.*, 695 F.3d 597, (2012)(cert. denied 2013) and a U.S. Supreme Court decision, *Maracich v. Spears*, (No. 12-25; 2013), many law enforcement agencies have had to significantly alter their procedures for complying with the Wisconsin Public Records Law. These Federal cases as well as Article VI, Section 2 of the U.S. Constitution, Wis. Stats. 19.36 (1) and 19.35 (1)(a) recognize that the Federal Driver Privacy Protection Act (DPPA) supersedes State law in determining what records or parts of records can be released to the public.

In order to comply with these decisions interpreting the Federal Driver Privacy Protection Act, we must remove from our reports "personal information that identifies an individual" including the following data elements before copies of such reports may be provided to the public without the written consent of the persons named therein:

1. Names
2. Dates of Birth
3. Addresses (except 5-digit zip codes)
4. Phone numbers (cell and land line)
5. Photographs
6. Social Security Numbers
7. Medical or disability information
8. Driver's license and DOT ID card numbers and physical descriptors
9. Vehicle registration plate numbers and related information
10. Vehicle Identification Numbers (VIN)

We wish you to be aware that your copy of a requested police report may contain significant deletions (blacked out) in order to comply with the Federal law and avoid both civil and criminal penalties. Such penalties also apply to any person who disseminates legally protected personal

data items without a permissible use as stated in the Federal DPPA. (A list of such permissible uses is attached to this memo.) If you qualify for one of these Federal uses, you may complete a form certifying that fact in order to receive the entire, unredacted (not blacked out) copy of the requested document. Falsifying this form may result in Federal and/or State civil and/or criminal penalties.

If you are requesting a police report that pertains to you personally, you will receive a copy of the report with all your “personal information” contained thereon but all other personal information pertaining to other individuals/drivers will be redacted (blacked out). This means that you must properly identify yourself when requesting a police record so that we can locate the record pertaining solely to you. You can only receive an entire, unredacted copy if you properly execute the DPPA form attesting to your eligibility for one or more of the permissible uses listed thereon, or you provide a written and notarized release signed by each person mentioned in the police report.

Traffic Crash/Accident Reports:

As a result of the Wisconsin Court of Appeals decision *New Richmond News v. City of New Richmond* (2014AP1938; May 10, 2016), the Federal Driver Privacy Protection Act (DPPA) no longer applies to traffic crash/accident reports.

Such crash reports will be provided to anyone without redactions and without having to fill out the DPPA form now used solely for other police reports.

How to Request a City of Brookfield Police Report:

1. Call (262) 787-3702, or
2. Fax your request to us at (262) 782-8757, or
3. Come in person to the police station at 2100 N. Calhoun Road, Brookfield, WI 53005, or
4. Mail a written request to the Police Records Division at the address at #3 above.
5. If you have received one, return the FDDPA Permissible Use Form along with your request specifying the date of the crash/incident, location, parties' names, and the nature of the police call. Please provide as many of these items as you can. If you have a police report number (starts with a 'B'), please include that number with your request.

We seek your patience in responding to your request(s). Given the nature of the Federal law, we must examine each page of each report and redact (black out) ten (10) different data elements wherever they are found. This is a laborious and time-consuming process that must be handled in addition to our regular public service/public safety duties.

This memo is for information purposes only and should not be construed as a denial of any particular record request or as providing legal advice. Further, any request which later is actually denied is subject to review by mandamus under Wis. Stat. 19.37 (1) or upon application to the attorney general or a district attorney.

**FEDERAL DRIVER PRIVACY
PROTECTION ACT PERMISSIBLE USES FORM**

Date of Request _____
Report # _____
For Agency Use Only

Based upon the Federal Driver's Privacy Protection Act, this Request must be completed before information containing personally identifiable information in the Police Report can be released without redaction. Knowledge of what access and uses are permitted under the listed Federal Act is the responsibility of the Requester.

SECTION I. REQUESTER INFORMATION:

Name of Person Completing Form: _____
Firm/Corporation: _____
Phone Number: _____
Street Address: _____

SECTION II. RECORD INFORMATION SHEET

Date of Accident/Incident: _____
Location of Accident/Incident: _____
Party Name to the Accident/Incident: _____

SECTION III. AUTHORIZATION

The Driver's Privacy Protection Act is enforced by the United States Department of Justice, which may seek civil and criminal penalties for improperly obtaining, disclosing, or using personal information from an accident report or other police record, or the information was acquired through the Wisconsin Department of Transportation System and it is determined that these records are used for purposes other than as stated in this Request.

I/We are authorized under the Federal Driver's Privacy Protection Act to obtain the identified accident/incident report and personal information based upon the following (mark all applicable boxes):

- 1. Authorized for use, if Requester has obtained the written and notarized consent from the person about whom the information pertains.
 - I am requesting a copy of my own record.
 - I am a parent or legal guardian of a minor child and I am requesting a copy of his/her record.
 - I am requesting the record of another person and have attached their written and notarized consent.

- 2. For use in connection with matters of a motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Anti-Car Theft Act of 1992 and the Clean Air Act.

- 3. A government agency (Federal, State, local or tribal) or employed by such, for the purposes of the government agency to carry out its official functions.

- 4. A Federal, State, Circuit, local or tribal court, or employed by such, for the purposes of the court to carry out its official functions.
- 5. A Wisconsin or out-of-state law enforcement agency, or employed by such, for the purpose of the law enforcement agency to carry out its functions.
- 6. Authorized representative, agent, contractor, or employed by such, of a legitimate business and the vehicle/driving record being requested will be used for normal course of business, but only to:
 - a. Verify accuracy of the personal information;
 - b. Obtain correct information, but only for purposes of preventing fraud, pursuing legal remedies, or collecting a debt.
- 7. Authorized for use in connection with any civil, criminal, administrative, or arbitral proceedings in any federal, state, circuit, local, or tribal court or agency, or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, circuit, local, or tribal court. Client's Name: _____
- 8. Authorized for use in research activities and producing statistical reports, as long as the personal information is not published, redisclosed, or used to contact individuals.
Date Range: _____ Kind/nature: _____
- 9. Authorized representative, agent, contractor, or employed by such, of an insurer, insurance support organization or self-insured entity and the vehicle/driving record(s) being requested will be used only in connection with the following:
 - a. Claims investigation;
 - b. Anti-fraud activities;
 - c. Rating or underwriting. Client's Name: _____
- 10. Authorized for use in providing notice to the owners of towed or impounded vehicles.
- 11. Authorized representative or owner of a licensed private investigative agency or licensed security service and the vehicle/driving record is being requested for the use of purposes permitted under the Federal Driver's Privacy Protection Act.
- 12. Authorized as an employer, or its agent or insurer for use in obtaining or verifying information relating to a holder of a commercial driver license (CDL).
- 13. Authorized representative or owner of a private toll transportation facility for use in the operation of the facility.

Certification

I(we) certify that the information and statements on this request are true and correct, comply with the provisions of the Federal Driver's Privacy Protection Act and understand that the willful, unauthorized disclosure of information obtained from these records for a purpose other than stated on this request, or the sale or other distribution of the information to a person or organization not disclosed in this request may result in civil and criminal penalties imposed under Title 18 U.S.C. Section 2724. I/We will also defend, indemnify, and hold harmless the City of Brookfield and its employees or agents from all claims, actions, damages, or losses, arising from my/our representations made in the execution of this form, whether said representations were negligently or intentionally in nature made to said City.

X _____
(Requester Signature)

(Date Signed)