LEGAL AND INSTITUTIONAL BARRIERS TO THE ACQUISITION AND USE OF MOTOR VEHICLE LICENSE PLATE RECORDS

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Public opinion, state laws and regulations, and in some instances municipal ordinances, differ from jurisdiction to jurisdiction with regard to who may collect license plate data and to what uses these data may be put. Increasingly, public opinion and public policy are becoming more restrictive as the power of license plate imaging and analysis technology increases and the scope of application of this technology widens. It is important in this dynamic, emotion-laden environment for transportation professionals to have a clear and comprehensive understanding of how various jurisdictions treat the acquisition and use of license plate data, how views and positions regarding use are changing, and how we can most responsibly involve ourselves in a professional capacity in the continuing development of public policy in these regards. It is toward providing information upon which understanding and action can be taken that this research is addressed.
INTRODUCTION

In recent years, video technology has become established as an important feature in many aspects of transportation planning and systems management. An important application involves the acquisition and analysis of license plate images. Common examples include enforcement of electronic toll systems and the collection of travel time and origin-destination data; less common, but growing in frequency, are monitoring and enforcing compliance with traffic controls, speed limits and high-occupancy vehicle (HOV) lane use. Each of these several applications entails a different degree of perceived or actual intrusion into the privacy of motor vehicle users and potential violation of their civil rights. At one extreme is the measurement of travel times by matching license plates at two or more locations – an application in which only the most ephemeral record of the acquired license plate images needs to be made and in which no contact with registrants is undertaken. At the other extreme is the use of video images of license plates and vehicle interiors to monitor and enforce appropriate HOV lane use or the matching of license plate images against motor vehicle registry files to obtain addresses for mail-out mail-back origin-destination surveys.

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USES OF LICENSE PLATE DATA – STEPS IN THE PROCESS

It is important to identify and differentiate between three basic steps in making use of license plate data:

(1) Acquisition of license plate images;
(2) Access to motor vehicle records;
(3) Uses to which motor vehicle license and registration data may be put.
ACQUISITION OF LICENSE PLATE IMAGES

The growing concern over the potential for invasion of privacy inherent in the acquisition and use of motor vehicle license plate and related motor vehicle registry data is prompted by the increasing ubiquity of video imaging technology and the ease with which computerized records can be accessed and manipulated. To date, this concern has not led to legislated restrictions on the use of video cameras to acquire license plate images at either fixed installations, such as toll plazas or parking facilities, or along highways in connection with origin-destination and other traffic surveys. Temporary administrative restraints have been imposed on the latter use on occasion in response to individual complaints but no legislative proscription has been instituted.

ACCESS TO MOTOR VEHICLE RECORDS

Motor vehicle registration records may be accessed through any of the several components in those records, the most obvious being the information contained on the vehicle license plate, the name of the registrant, and the address at which the vehicle is registered. Our concern in the present instance is the link between the information appearing on a given vehicle’s license plate and information pertaining to that vehicle contained in the vehicle registration record, such as the registrant’s address. The law concerning access to motor vehicle records does not concern itself with how those records are accessed, however, only with the dissemination and use of the records.

USES TO WHICH MOTOR VEHICLE LICENSE AND REGISTRATION DATA MAY BE PUT

The law regulating the disclosure and use of information contained in motor vehicle records (USC Sect. 18, Part I, Ch. 123, Para. 2721) differentiates in considerable detail between permissible and impermissible uses. A clear distinction is made in this regard between public agencies and other users; the law also distinguishes among various public agency uses, as well. These several distinctions are considered in detail in the following section.

Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records - - USC Section 18, Part I, Chapter 123, Section 2721.

This federal law, whose short title is “Driver’s Privacy Protection Act of 1994”, was enacted September 13, 1994 to take effect three years from that date. The law provides that:

(a) In General. Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.
The exceptions in subsection (b) of particular interest in the present study are these:

(b) Permissible Uses. Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, 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 Motor Vehicle Information and Cost Savings Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act, and may be disclosed as follows:

(1) 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.

(2) For use in connection with matters of 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.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any use other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator’s permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that:
Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

The information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

In view of the exceptions provided for above, and in the various numbered subsections omitted here, it would appear that the underlying purpose of the “Driver’s Privacy Protection Act of 1994” is to regulate, but not unduly restrict the availability and use of information contained in state motor vehicle registry files. In response to subsections (10) and (11) states have in one form or another provided the means by which individual registrants can restrict public or commercial access to information contained in their motor vehicle record. A copy of the “Opt Out” form made available for Maryland Residents by the Maryland Department of Transportation Motor Vehicle Administration is provided as Figure 1, below.
Figure 1. “Opt Out” Procedure for Maryland Residents

MARYLAND RECORD RESTRICTION NOTICE

A. [ ] I do not want my driver record or motor vehicle records released to individuals who are not authorized by law to receive them.

B. [ ] I do not want my driver record or motor vehicle records released to companies who mail offers and information on consumer products and services, conduct surveys, or solicit business.

C. [ ] Both A and B.

MARYLAND RECORD RESTRICTION NOTICE

As a result of new federal and state privacy laws, the Motor Vehicle Administration (MVA) is offering residents an opportunity to keep their MVA driver and motor vehicle records private. If you choose to keep your records private, this information will be restricted to government officials, law enforcement personnel and those who need it in connection with motor vehicle or driver safety, theft, emissions and manufacturer recalls. If you do not choose to keep your records private, this information will be given out upon request.

If you would like to keep your MVA records private, please call the toll-free number 1-888-MVA-DPPA (1-888-682-3772) or complete the information above and return it to any MVA office or mail it to: MVA, DPPA, 6601 Ritchie Highway, NE, Glen Burnie, MD 21062. TTY FOR THE DEAF 1-800-492-4575
THE CONSTITUTIONAL BASES FOR FEDERAL REGULATION OF ACCESS TO STATE MOTOR VEHICLE RECORDS

The Constitutional basis for the 1994 Driver’s Privacy Protection Act lies, most obviously, in Article I, Section 8, under which Congress is expressly empowered to “...regulate Commerce...among the several States...” The Act, it has been also argued, is a legitimate exercise of Congress’s power to protect individual rights under Section 5 of the 14th Amendment, as the Act results from Congress’s efforts to protect women from threats and harm by those who seek to locate them through state motor vehicle records.* This argument was made by the Solicitor General before the U.S. Supreme Court in response to a ruling in 1998 by the U.S. Court of Appeals for the Fourth Circuit striking down the federal act in a case brought before the Appeals Court by the State of South Carolina. Although the South Carolina appeal was made on behalf of state’s-rights, the more immediate concern is for the revenues states derive from selling motor vehicle records to commercial vendors.

ADMINISTRATIVE LIMITATIONS TO ACCESS

It has been argued in an earlier section that the federal Driver’s Privacy Protection Act does not unduly restrict access to motor vehicle records. Nor do state laws so. State laws requiring public access to public records generally guard against such restrictions. However, administrative procedures often make difficult and time-consuming what laws are intended to allow. This is particularly the case where an agency in one state seeks access to the motor vehicle records of another state. In these instances, the issue is not one of privacy rights, but rather of an agency assuming a position of “ownership” that goes beyond the requirements of stewardship. Such impediments can, usually, be overcome, but often only at a considerable cost in time.

SUMMARY AND RECOMMENDATIONS

The collection of license plate data by means of video cameras and camcorders has become standard practice for many types of traffic surveys and traffic management applications. Linking these data to motor vehicle records is now regulated by federal law. Such regulations have not been found to unduly restrict access to such records by public agencies or their consultants. More problematic are the barriers erected through administrative procedures, especially when more than one state is involved. As is generally the case in such matters, inter-state and inter-agency barriers can best be overcome by the interested parties working together well in advance of the time by which access to the desired records needs to be provided. It is recommended that working groups in multi-state metropolitan areas establish acceptable protocols for access to motor vehicle records that can be invoked as the need arises in connection with a given survey or traffic management activity.