

**STATE OF WISCONSIN                      CIRCUIT COURT                      ST. CROIX COUNTY**

**NEW RICHMOND NEWS, and  
STEVEN DZUBAY**

Plaintiffs,

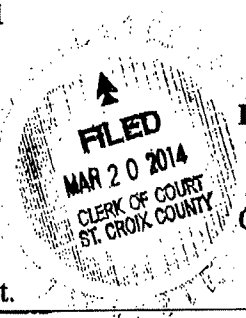
vs.

**CITY OF NEW RICHMOND,**

Defendant.

**DECISION AND ORDER**

Case No. 13 CV 163



**INTRODUCTION**

Plaintiffs have filed a motion for judgment on the pleadings pursuant to Wis. Stat. § 802.06(3) asserting Defendant, City of New Richmond (the "City"), violated the Open Records Law by redacting identifying information from law enforcement reports. The City opposes Plaintiffs' motion arguing they are required to redact personal information obtained through the Department of Motor Vehicles ("DMV") and were only redacting information in compliance with the law.

**FACTUAL BACKGROUND**

The material facts are undisputed by the parties and are as follows. This case arises out of a dispute between the parties with respect to New Richmond News' (the "Newspaper") written request for copies of four police reports. Two of the requested records are standard Wisconsin Motor Vehicle Accident Reports, from which the City redacted information identifying the owner and operator of the vehicles involved before disclosure to the newspaper. A third record is an incident report concerning a complaint of retail gas theft, from which the City redacted information identifying the complainant,

the suspect and a person employed by the victim, a named corporation. The fourth requested record was not redacted.

The New Richmond Police Department responded to the Newspaper's written request by letter, acknowledging its policies on public access to police reports had changed based upon its interpretation of recent case law from the United States Federal Court for the 7th Circuit regarding the Drivers Privacy Protection Act ("DPPA"). The City explained any information obtained through the DMV was protected under the DPPA and accordingly redacted such information it believed fit within this category.

On March 13, 2013, the Newspaper filed a complaint in St. Croix County, Wisconsin seeking a declaration that the DPPA does not require the removal of personal information from law enforcement records before public disclosure, or otherwise alter the responsibilities under the Open Records Law.

In April of 2013, the City removed the case to the Western District of Wisconsin pursuant to 18 U.S.C. § 1331. The Newspaper filed a motion for remand, which was granted by order on October 28, 2013.

As it is understood by this Court, the thrust of the City's reason for redacting this information is because certain information within the law enforcement citations are auto-populated from information obtained from the Wisconsin DMV, which the City determined it must redact to comply with the DPPA.

### **JUDGMENT ON THE PLEADINGS STANDARD**

A motion for judgment on the pleadings under Wis. Stat. § 802.06(3) is decided according to the same methodology as a motion for summary judgment, "minus the

affidavits and other supporting documents.” *Schuster v. Altenberg*, 144 Wis.2d 223, 228, 424 N.W.2d 159 (Wis. 1988). A court should first determine whether the complaint states a claim for relief and “then turn to the responsive pleadings to determine whether a material factual issue exists.” *Schuster*, 144 Wis.2d at 228. If the material facts are undisputed, “the court may determine that the moving party is entitled to a judgment as a matter of law.” *Id.* at 228. Granting or denying judgment on the pleadings is a question of law. *Freedom from Religion Foundation, Inc. v. Thompson*, 164 Wis.2d 736, 741, 476 N.W.2d 318 (Wis. Ct. App. 1991).

This Court notes that the facts of this case are undisputed and as such, the issue is whether there are any genuine issues of material facts that prevent Plaintiffs to judgment as a matter of law.

Neither party provided a full copy of 18 USCA §§ 2721 and 2725 in their briefs, so the Court determined that was no disagreement as to the wording of those sections of the DPPA.

## ANALYSIS

### I. Statutory Framework

Wis. Stat. § 19.31 states, in part,

In recognition of the fact that a representative government is dependent upon an informed electorate, 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... To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access...

(2013).

However, Wis. Stat. § 19.36 expressly recognizes “[a]ny record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure...” (2013).

The DPPA restricts the disclosure of personal information obtained from a state department of motor vehicles. ~~18 U.S.C. § 2721. The DPPA defines personal information~~ as “ information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status. 18 U.S.C. § 2725(3).

There are fourteen exceptions within the statutory framework of the DPPA that permit disclosure of personal information, three of which Plaintiffs argue apply, including: § 2721(b)(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 Federal, State or local agency in carrying out its functions; § 2721(b)(2) for use in connection with matters of motor vehicle or driver safety and theft; and §2721(b)(14) for any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety. However, a recipient who is initially authorized to receive personal information may only redisclose the information for a use permitted under one of the fourteen recognized exceptions, with the exclusion of two exceptions not applicable to this case. § 2721(c).

## II. The *Senne* Decision

Both parties argue the *Senne* decision in support of their respective positions and as such, this Court will begin its analysis with a brief discussion of the case.

*Senne v. Village of Palatine* involved a motorist, Senne, who alleged the parking citation placed on his vehicle revealed personal information in violation of the DPPA.

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~~695 F.3d 597, 599 (7th Cir. 2012). The Village of Palatine (the "Village") moved to~~

dismiss Senne's claims under Fed. R. Civ. P. 12(b)(6) arguing the parking citation was not a disclosure under §§ 2721-25, and in the alternative, any disclosure fell within a specifically permitted purpose identified in the statute. *Senne*, 695 F.3d at 599. The Federal District Court and a panel of the Appellate Court agreed with the Village but granted rehearing en banc. *Id.* at 599. On review, the Court of Appeals examined the scope of the DPPA's protection of personal information contained in motor vehicle records and the reach of the statutory exceptions. *Id.*

The citation at issue in *Senne* was printed electronically on a pre-existing form and included information about the vehicle as well as his full name, address, driver's license number, date of birth, sex, height and weight. *Id.* at 600. The focus of the court's inquiry in *Senne* was whether placing the citation on the window of the car constituted a disclosure and if so, whether any exception to the statute applied. *Id.* at 601.

The court noted a disclosure was not defined within the DPPA but recognized Congress intended a broad meaning with the language "otherwise make available," *Id.* at 602. As such, the court determined a disclosure included the Village placing a parking citation on Senne's automobile. *Id.*

The Village argued the placement of the citation was permitted under § 2721 subsection (b)(1), for use by a law enforcement agency in carrying out its functions, or

(b)(4), for use in connection with any civil or administrative proceeding, including the service of process. *Id.* at 605. The court rejected this argument, hinging its analysis on the statutory authorization “for use by a law enforcement agency” requiring the actual information disclosed must be information that is used for the identified purpose. *Id.* at

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606. (internal quotations omitted).

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Ultimately, the court concluded that “the Village’s placement of protected information in view of the public constituted a disclosure regulated by the statute...Furthermore, because Mr. Senne has articulated a plausible claim that the Village’s actions failed to fulfill its statutory duties, the case should not have been dismissed.” *Id.* at 609. Most importantly, the court concluded further proceedings were required to determine whether all of the disclosed information actually was used in effectuating an exempt purpose. *Id.* at 608 (emphasis removed).

As an initial matter, this Court notes that this case is factually and legally distinguishable from the circumstances in *Senne*. *Senne* does not address the application of the DPPA in connection with a valid request made under a state’s public records law. As such, the interpretation by the 7th Circuit in *Senne* is inapplicable to this matter.

### III. Exceptions

The issue in this case is whether a DPPA’s exception under § 2721 authorizes disclosure of law enforcement records containing personal information in compliance with Wisconsin’s Open Records Law. Having reviewed the arguments of counsel, this Court concludes that it does and that the City is not required to redact the personal information at issue in this case.

The Wisconsin Open Records Law under § 19.31 mandates disclosure of information *regarding the affairs of government and the official acts of those officers and employees who represent them.* (emphasis added). The records requested here related directly to the affairs of government and the official acts of the officers and employees of ~~the City of New Richmond, Wisconsin. See id.~~ The records all relate to the official acts of police officers responding to and reporting on specific events in the City. Further, it is an official act of the City to respond to such records requests in compliance with the Open Records Law. *See id.* As such, the umbrella of § 2721(b)(1) allows for such permissible disclosure to allow the City to carry out this “essential function.”

In addition, § 2721(b)(14) provides a broad exception for uses specifically authorized under “the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.” Under Wis. Stat. § 346.70(4), uniform traffic accident reports are required to be disclosed upon request, subject to the order and requirements of the custodian of such reports. Such disclosure is directly related to the public safety of the City as enforced by the Police Department and other agencies. As such, this required disclosure falls within § 2721(b)(14) as a use related to the operation of a motor vehicle or public safety. Lastly, this Court notes two of the three requested reports are Uniform Traffic Accident Reports, which do not fit the statutory definition of “personal information” under § 2725(3).

**DECISION**



The DPPA does not require the redaction of the information requested by Plaintiffs because such disclosure is permitted under § 2721(b) and the Wisconsin Open Records Law requires the City to respond to records requests and provide such ~~information in the performance of official duties by the City. The Plaintiffs are entitled~~ to reasonable attorney fees and actual costs as the prevailing party and shall provide that information for the Court's review and decision.

The Plaintiffs are ordered to draft the entry of judgment after the determination of attorney fees and costs.

**BY THE COURT:**

A handwritten signature in black ink that reads "Howard W. Cameron". The signature is written in a cursive style.

Honorable Howard W. Cameron  
 St. Croix County Circuit Court Judge  
 Branch IV

Dated this 20<sup>th</sup> day  
 of March 2014.