

September 18, 1998

No. 8261

This opinion is issued in response to questions from Jan Curry, Manager of the Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (ODOT), about ORS 802.175 to 802.191, enacted as chapter 678, Oregon Laws 1997 (House Bill 2096). These statutes govern the disclosure and redisclosure of personal information from motor vehicle records.

### FIRST QUESTION PRESENTED

Is ODOT prohibited by ORS 802.177 from disclosing personal information from motor vehicle records to other agencies of the State of Oregon?

### ANSWER GIVEN

ORS 802.177 does not prohibit ODOT from disclosing personal information from motor vehicle records to state agencies, although unrestricted disclosure to state agencies would be prohibited by federal law. ODOT may disclose personal information from motor vehicle records to state agencies as mandated by ORS 802.179(1) or as permitted by 18 USC § 2721(b).

### SECOND QUESTION PRESENTED

To what extent does ORS 802.181(1) restrict a government agency's use of personal information obtained from motor vehicle records under ORS 802.179(1)?

### ANSWER GIVEN

ORS 802.181 does not restrict a government agency's use of personal information in carrying out that agency's governmental functions. ORS 802.181 prohibits an agency's resale or redisclosure of personal information for purposes other than those authorized by ORS 802.179.

### THIRD QUESTION PRESENTED

Does ODOT have a duty to control, restrict or monitor the redisclosure of personal information it has provided under ORS 802.179?

### ANSWER GIVEN

No.

### DISCUSSION

On September 13, 1994, Congress enacted the federal Driver's Privacy Protection Act (DPPA), Pub L No. 103-322, Title XXX, ch 123, 108 Stat 2099 (1994). Subject to various exceptions, this law generally prohibits a state department of motor vehicles from knowingly disclosing personal information about an individual obtained in connection with a motor vehicle record to any person or entity. 18 USC § 2721(a). Exceptions to the prohibition authorize disclosure of personal information for various business or governmental uses, including use by a government agency in carrying out its functions. 18 USC § 2721(b)(1). Those persons and entities authorized by the statute to obtain personal information are restricted in their ability to resell or redisclose such information. 18 USC § 2721(c). The DPPA became effective on September 13, 1997, three years from the date of its enactment, in order to give the states an opportunity to implement any law or procedural changes necessary to comply with its provisions.

To implement the DPPA and to protect the privacy and safety of Oregon citizens, ORS 802.175 to 802.191 were enacted effective September 13, 1997. Testimony of Representative Tim Josi, Senate Transportation Committee (HB 2096), May 19, 1997, tape 95, side A at 30.

Oregon's new statutes are substantially similar to the DPPA. ORS 802.177 prohibits ODOT from disclosing personal information obtained in connection with a motor vehicle record to any person, while ORS 802.179 sets out the exceptions

to that general prohibition on disclosure. There are also restrictions on the resale or redisclosure of personal information by a person or government agency authorized under ORS 802.179 to receive such information, and record-keeping requirements for any authorized resale or redisclosure of the information. ORS 802.181.

The questions asked require us to interpret these new state statutes. In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as the rule that "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context, the search ends there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *Id.* at 611-612. If, after considering text, context and legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

## I. Disclosure by ODOT to Agencies of the State of Oregon

We are first asked whether ORS 802.177 prohibits ODOT from disclosing personal information from motor vehicle records to other agencies of the State of Oregon. ORS 802.177 states:

Except as otherwise provided in ORS 802.179, neither the Department of Transportation nor any officer, employee or contractor of the department may knowingly disclose or otherwise make available to **any person** personal information about an individual that is obtained by the department in connection with a motor vehicle record.

(Emphasis added.) ORS 802.177 prohibits ODOT from disclosing personal information to any "person." A "person" is defined as "an individual, an organization or an entity, but does not include the State of Oregon or any agency thereof." ORS 802.175(2). Because state agencies are expressly excluded from the statutory definition of "person," it follows that ORS 802.177 does not prohibit ODOT from disclosing personal information from a motor vehicle record to a state agency.

Although we conclude that ORS 802.177 does not prohibit ODOT from disclosing personal information from motor vehicle records to state agencies, such disclosure must also be permitted by the DPPA to be lawful. The DPPA's provisions override inconsistent provisions of state law. *See* US Const Art VI, cl 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof \* \* \* shall be the supreme Law of the Land"); *Gibbons v. Ogden*, 22 US (9 Wheat) 1, 210-211, 6 L Ed 23 (1824) (state law that is contrary to valid federal law must yield).

The DPPA prohibits a state department of motor vehicles, subject to certain exceptions, from disclosing personal information to any "person or entity." 18 USC § 2721(a). The term "entity" includes a state agency. Accordingly, we review the exceptions to the DPPA's general prohibition of disclosure to determine whether, and for what purposes, they permit ODOT's disclosure of personal information from motor vehicle records to other state agencies.

The DPPA expressly permits disclosure of personal information for use by "any government agency \* \* \* in carrying out its functions." 18 USC § 2721(b)(1). This DPPA provision has its counterpart in ORS 802.179(1), which provides:

The Department of Transportation, upon request or as required by law, shall disclose personal information from a motor vehicle record to a government agency for use in carrying out its governmental functions.

ORS 802.179(1).

The term "government agency" is not defined either in the DPPA or in ORS 802.175 to 802.191. In its common usage, "governmental agency" includes a state agency. Its legal definition is "a subordinate creature of federal, state or local government created to carry out a governmental function or to implement a statute or statutes." *Black's Law Dictionary* 696 (6th ed 1990). We conclude that, for purposes of both the DPPA and ORS 802.175 to 802.191, the term "government agency" includes an agency of the State of Oregon and that ODOT must disclose personal information to such agencies for use in carrying out their governmental functions. There is no conflict between the disclosure to state agencies that is permitted by 18 USC § 2721(b)(1) and the disclosure to state agencies mandated by ORS 802.179(1).

Several of the other exceptions to the federal prohibition on disclosure would also permit disclosure to state agencies. *See, e.g.*, 18 USC § 2721(b)(5), (13). ORS 802.179 either does not contain similar provisions or restricts the authorized disclosures to "persons." Nevertheless, because of our conclusion above that ORS 802.177 does not prohibit ODOT from

disclosing personal information to state agencies, the lack of express authorization in state law is irrelevant. Accordingly, we conclude that ODOT may disclose personal information from motor vehicle records to state agencies as mandated by ORS 802.179(1) or as permitted by 18 USC § 2721(b).

## II. Government Agency's Use of Personal Information

We are next asked to what extent ORS 802.181(1) restricts a government agency's use of personal information obtained from motor vehicle records under ORS 802.179(1). ORS 802.181(1) provides that, with certain exceptions,

a person or government agency that is authorized under ORS 802.179 to receive personal information from motor vehicle records may resell or redisclose the information only to a person authorized to receive it under ORS 802.179 and only for purposes authorized under ORS 802.179.

ORS 802.181(1) thus establishes the conditions under which a person or government agency authorized to obtain personal information from ODOT pursuant to ORS 802.179 may "resell" or "redisclose" such information to someone else. The person to whom the information will be resold or redisclosed must be authorized to receive it and that person must intend to use the information for an authorized purpose.

For example, under ORS 802.179(14), representatives of the news media may obtain personal information "for the gathering or dissemination of information related to the operation of a motor vehicle or to public safety." *See also* 18 USC § 2721(b)(14). Consequently, a government agency may "resell" or "redisclose" personal information that it obtains from motor vehicle records under ORS 802.179(1) to a representative of the news media for that representative to use in gathering or disseminating information related to the operation of a motor vehicle or to public safety. In this case, both the person who will receive the information and the intended use are authorized under ORS 802.179(14).

We understand that this question arises because government agencies, in carrying out their governmental functions, may have a need to provide personal information obtained from motor vehicle records to persons who are not authorized under ORS 802.179 to receive such information. Moreover, government agencies must frequently provide information to other government agencies in order to carry out governmental functions. Yet, ORS 802.181(1) authorizes redisclosure only to a "person," a term that does not include a state agency. ORS 802.175(2).

For example, upon request from a police officer conducting a traffic stop, a police dispatcher obtains personal information from the ODOT motor vehicle records and transmits that information to the officer via police radio. Although intended for use only by the police officer, information broadcast via police radio is accessible to the general public. *Cf. State v. Bichsel*, 101 Or App 257, 790 P2d 1142 (1990). While in contact with the person stopped, the officer then uses the information to verify the driver's identity, address and license number and to complete a traffic citation, a copy of which is given to the court. If the dispatcher's broadcast of the information to the officer via radio or the officer's providing to the court a copy of a traffic citation containing such information constitute "redisclosures" within the meaning of ORS 802.181(1), they would violate ORS 802.181(1) because neither "redisclosure" is to an authorized "person" for an authorized purpose. In each of these situations, the use of the information is inherent in the governmental purpose for which the information was obtained by the police dispatcher from ODOT. Thus, the question is whether a government agency's use of personal information obtained under ORS 802.179(1) could constitute an unauthorized redisclosure of the information under ORS 802.181(1).

Considering the text and context of ORS 802.179 and ORS 802.181, we believe there is a distinction between the "use" of personal information as authorized by ORS 802.179(1) and the "resale" or "redisclosure" of such information under ORS 802.181(1). We find nothing in the text and context of these statutes to suggest that the legislature intended ORS 802.181(1) to restrict a government agency's ability to carry out its governmental functions. Nor do we find anything in the legislative history that so suggests. We conclude that when a government agency uses personal information from a motor vehicle record "in carrying out its governmental functions," that use is not a resale or redisclosure of the information within the meaning of ORS 802.181 even if the use involves providing the information to someone who is not entitled under ORS 802.181(1) to receive the information by "redisclosure."

The term "governmental function" is not defined in ORS 802.175 to 802.191. The common meaning of the term "function" is the "action for which a person or thing is \* \* \* responsible or for which a thing exists \* \* \* role, duty, work". Webster's Third New International Dictionary 920 (unabridged 1993.). Applying this definition, a government agency's functions would be those responsibilities or duties for which the particular agency exists. Yet, the legislature did not merely refer to the government agency's "functions" but rather its "governmental functions."

In the context of the constitutional separation of powers prohibiting a person in one branch of government from exercising the functions of another branch, Or Const Art III, § 1, we have stated that, in determining whether an action performed by government officials constitutes a governmental function, the "principal inquiry must be whether the action in question is integral to the movement of the government in an area where the sovereign has the power and authority to act." 43 Op Atty Gen 205, 209 (1983). Thus, we found that the statutory duties of the Commission on Indian Services to compile information and to develop and sponsor informational programs were not the acts of a sovereign and did not constitute the exercise of governmental power. *Id.* at 209-10. In contrast, we found that the duties of the Capitol Planning Commission to control the development of certain real properties and buildings that house and are the sites of the operation of government were the exercise of a sovereign's governmental power. *Id.* at 210-11.

With respect to ORS 802.179(1), we believe that an agency is carrying out its "governmental functions" when it performs those duties for which the agency exists that are integral to the movement of the government in an area where it has the power and authority to act. In carrying out these functions, ORS 802.179(1) permits a government agency to use personal information from motor vehicle records. Thus, in the example above, the police dispatcher "uses" the personal information obtained from motor vehicle records by sending it via radio to the police officer to carry out that police agency's governmental purpose, i.e., to enforce the traffic laws by assisting the officer in determining the identity of the driver so that the correct individual may be cited. *See* ORS 181.040, 810.410, ORS ch 811. The enforcement of traffic laws is a uniquely governmental function and one for which the police agency exists. Even though the dispatcher's broadcast might be accessible to the general public, the dispatcher's purpose in making the broadcast was solely to carry out that governmental function. Likewise, when the officer provides a copy of the traffic citation to the court, he or she is also carrying out the next step in enforcing the traffic laws of this state. *See* ORS 153.515(4), 153.535(1)(b), 153.565. Because the police agency is using the personal information obtained from ODOT motor vehicle records to carry out its governmental functions as authorized by ORS 802.179(1), such use is not a "redisclosure" within the meaning of ORS 802.181(1).

The Oregon State Police Law Enforcement Data System (LEDS) has a statutory mission to maintain a criminal justice information system for storage and retrieval of criminal justice information, including the collection and dissemination of information relating to crime and criminals. ORS 181.730. In carrying out this mission, LEDS maintains computer links with the ODOT Driver and Motor Vehicle Services Branch for the purpose of making available to the state's criminal justice agencies information that will assist them in enforcing state criminal and traffic laws. OAR 257-015-0040(5). Criminal justice agencies have access to motor vehicle records via LEDS for such criminal justice purposes; use of the information for other than authorized purposes is prohibited. OAR 257-015-0060(4). Because the governmental function of LEDS is specifically to gather and disseminate information to criminal justice agencies, its action in carrying out this function is not a "redisclosure" of personal information obtained from motor vehicle records within the meaning of ORS 802.181(1).

A resale or redisclosure would occur for purposes of ORS 802.181(1), however, if a government agency reveals personal information for a purpose not related to carrying out the agency's particular governmental function. For example, pursuant to the Public Records Law, a person may request to inspect or copy an accident report in the custody of a police agency. ORS 192.420. Although the police agency may be statutorily required to make the report available for inspection or copying, complying with such a request is not related to the police agency's carrying out its law enforcement functions; the agency does not exist for the purpose of providing public records. Therefore, it would be a "redisclosure" under ORS 802.181(1) to reveal in response to a public records request for an accident report any personal information obtained from a motor vehicle record that may be contained in that report. The police agency must redact the personal information before providing a copy of the report unless the requestor is authorized to receive such information under ORS 802.179 and intends to use it for a purpose authorized under ORS 802.179. ORS 192.505, 802.181(1).

This question whether a government agency violates the "redisclosure" prohibition when it provides personal information to another government agency as part of its own "use" of the information does not arise under the DPPA because that Act permits, with limited exceptions not applicable here, an "authorized recipient" of personal information to resell or redisclose the information "for a use permitted" under 18 USC § 2721(b). 18 USC § 2721(c). One of those permitted uses is by any government agency in carrying out its functions. 18 USC § 2721(b)(1). Thus, unlike ORS 802.181(1), which permits redisclosure only to a "person" authorized to receive the information under ORS 802.179, the DPPA permits "redisclosure" for any permitted use, which would include disclosure to other government agencies for use in carrying out their functions.

To the extent a government agency's functions require that agency to provide information to someone other than a government agency, we believe a court would conclude, for the reasons discussed above, that the agency's action was not a "redisclosure" prohibited by 18 USC § 2721(c). Rather, such an action should be a necessary element of carrying out that

agency's functions and therefore a permitted use under 18 USC § 2721(b)(1).

### **III. Duty to Control, Restrict or Monitor Redisclosure of Personal Information**

Finally, we are asked whether ODOT has a duty to control, restrict or monitor the resale or redisclosure of personal information that it has provided under ORS 802.179. We have found no statutes that require or authorize ODOT to control or restrict the resale or redisclosure of personal information once it has been disclosed by ODOT pursuant to ORS 802.179.

ORS 802.181(6) requires a person, other than a representative of the news media, who resells or rediscloses personal information received from ODOT under ORS 802.179 to keep records identifying the person to whom the information is provided and the purpose for which the information will be used. Those records must be made available to ODOT upon request. ORS 802.181(6). We conclude that ORS 802.181(6) impliedly authorizes ODOT to review the records maintained by persons under that provision and thus to monitor the resale and redisclosure of personal information. Nevertheless, we do not find any mandate in the state or federal statutes that requires ODOT to monitor the resale or redisclosure of personal information.

### **IV. Role of Attorney General**

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