

WISCONSIN SUPREME COURT
FRIDAY, SEPTEMBER 18, 2015
10:45 a.m.

In this bypass of the District III Court of Appeals (headquartered in Wausau), the Supreme Court reviews a decision by St. Croix County Circuit Court, Judge Howard W. Cameron Jr. presiding. A party may ask the Supreme Court to take jurisdiction of an appeal or other pending Court of Appeals' proceeding by filing a petition to bypass pursuant to sec. (Rule) 809.60, Stats. A matter appropriate for bypass usually meets one or more of the criteria for review, sec. (Rule) 809.62(1), Stats., and one the Court feels it will ultimately choose to consider regardless of how the Court of Appeals might decide the issues.

2014AP1938

New Richmond News v. City of New Richmond

This open records case, which bypasses the Court of Appeals, involves a dispute between the *New Richmond News* and the city of New Richmond over redacted information in police reports. A decision by the Supreme Court is expected to affect news organizations and law enforcement agencies statewide.

Some background: The three police reports at issue in this case include two uniform accident reports prepared by officers in compliance with Wis. Stat. § 347.70, and one incident report regarding theft of gasoline. The city of New Richmond Police Department produced the reports in response to the newspaper's public records request but first removed all identifying information concerning the motor vehicle drivers, owners, and witnesses from the accident reports and all identifying information concerning the theft complainant, suspect, and one other person from the incident report.

The city's response letter said that the federal Driver's Privacy Protection Act (DPPA) requires it to redact all personal information it obtained from or was verified with the state Department of Motor Vehicles (DMV).

The DPPA was passed to address safety and security concerns associated with excessive disclosures of personal information held by the state in motor vehicle records. Senne v. Village of Palatine, 695 F.3d 597, 607 (7th Cir. 2012). The DPPA also prohibits "any person" from knowingly obtaining or disclosing personal information from a motor vehicle record for any use not permitted. In addition, it "shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record."

The DPPA includes 14 exceptions which identify circumstances under which personal information may be disclosed. The newspaper relies on three exceptions in this case:

- (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. . . .
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- (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.

18 U.S.C. § 1721(b)(1), (2) and (14).

The newspaper filed an enforcement action under Wisconsin's public records law to compel the city to disclose unredacted accident and incident reports held by the police department, which generated those reports using personal information procured from the DMV.

The circuit court granted judgment on the pleadings to the newspaper following briefing and argument. The circuit court concluded that the DPPA does not prohibit the disclosure of law enforcement agency reports containing personal information when that is required by state law.

The lower court found the 7th Circuit's decision in Senne distinguishable since that case did not address the application of the DPPA in connection with a valid request made under a state's public records law.

The circuit court here held that all three records in question fell within exceptions and found that the 14th exception to the DPPA "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.'" Finally, the circuit court held that "two of the three requested reports are uniform traffic accident reports, which do not fit the statutory definition of 'personal information.'"

The city and the newspaper jointly petitioned the Supreme Court to take the case and bypass the Court of Appeals. The joint bypass petition says:

This appeal presents only questions of law, and those questions recur daily throughout Wisconsin. Law enforcement agency reports are routinely and frequently requested by citizens, insurers and other businesses, as well as journalists under the public records law and Wis. Stat. § 346.70(4)(f). The redaction of these records based on uncertainty over the DPPA's application and the potential for municipal liability creates expense for those records custodians who agree with the City's interpretation and frustrates requesters in those jurisdictions. By granting this bypass petition, this court can definitively resolve this growing statewide controversy. Pet. at 15-16.

The city's appellate brief frames the issue as follows:

May law enforcement redact "personal information" or "highly restricted personal information" from motor vehicle records in response to a public records request where the requester does not specify an applicable exception to access under the federal Driver's Privacy Protection Act[], 18 U.S.C. § 2721(a)?

The newspaper's response brief states the issue as follows:

"Must" the City redact personal information from law enforcement reports "under the federal Driver's Privacy Protection Act," [] based upon federal preemption? See Wis. Stat. Sec. 19.36(1) ("Any 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 under s. 19.35(1)")