

IN THE IOWA DISTRICT COURT IN AND FOR WAPELLO COUNTY

<p>Upon the Petition of MARK LEONARD MILLIGAN, Plaintiff, And Concerning CITY OF OTTUMWA, IOWA OTTUMWA POLICE DEPARTMENT, Defendants.</p>	<p>NO. EQEQ110695 FINDINGS OF FACT, CONCLUSIONS OF LAW, and RULING</p>
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The above-entitled cause was reached for trial, pursuant to assignment, on November 2, 2017. The Plaintiff, Mark Milligan (Milligan), appeared in person with attorney Steven Gardner. The Defendants were represented by attorney David Schrock. Evidence was received and the case was submitted. The Court has considered the testimony of witnesses, the exhibits, arguments of the parties, and the court file and now makes the following:

FINDINGS OF FACT

On or about July 30, 2016, Mr. Milligan submitted a written request to the City of Ottumwa pursuant to the Chapter 22 of the Iowa Code, titled “Examination of Public Records”. Mr. Milligan was acting in his individual capacity as a private citizen. Mr. Milligan’s letter requested a number of records concerning RedSpeed and the use of the RedSpeed Mobile Enforcement Vehicle by the City. RedSpeed is an Illinois-based company that provides a speed enforcement system by measuring vehicle speed using radar. RedSpeed informs the City of Ottumwa when there has been a speeding violation (civil infraction) and provides the violating vehicle’s information. The Ottumwa Police Department then reviews the violation and determines whether a civil infraction citation is issued. Mr. Milligan’s letter also requested the names of all speeding violators detected by RedSpeed, regardless of whether a civil infraction

citation had been issued or not. The City of Ottumwa provided much of the information requested by Mr. Milligan, but did not provide the names of aforementioned violators who were issued citations and those violators who were not. The City stated that the names of violators were confidential under state and federal law and, therefore, could not be disclosed.

The Plaintiff filed this petition pursuant to Iowa Code §22.10 to enforce the requirements of the statute and to request an order of mandamus to compel the Defendants to disclose the sought information. Further, the Plaintiff requests the Court order other remedies as provided for by Iowa Code §22.10.

CONCLUSIONS OF LAW

I. Chapter 22, also known as the Iowa Open Records Act, of the Iowa Code grants to every person the right to examine and copy public records. The section defines public records as “all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision...or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.” Public records are further defined as including “all records relating to the investment of public funds including...contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party. *Iowa Code §22.1.* A government body cannot prevent disclosure of public records by contracting with a nongovernmental body to perform any of its duties or functions. *Iowa Code §22.2(2).* There are a number of records that are confidential and cannot be released except by the lawful custodian, a person authorized to make such a release, or by order of a court. *Iowa Code §22.7.* Sections 22.5 and 22.10 allow for suits to be brought to enforce provisions of the chapter and for a court to assess damages to a party who violates this chapter. A party that

petitions for enforcement must show that the defendant is the lawful custodian and is subject to the requirements of this chapter by demonstrating that the records are government records and that the defendant refused to make those government records available for examination and copying by the plaintiff. *Iowa Code §22.10(2)*. After the plaintiff demonstrates that the provisions of the chapter apply, the defendant has the burden to demonstrate compliance with the chapter. *Id.* If a court finds by a preponderance of the evidence that the lawful custodian of the records has violated the chapter, the court must issue an injunction ordering the release of the sought information as well as awarding applicable damages and attorney fees. *Id.*

II. The Driver's Privacy Protection Act (DPPA) prohibits a State department of motor vehicles from knowingly disclosing personal information or highly restricted personal information about any individual obtained by the department in connection with a motor vehicle record without the express consent of the person to whom such information applies. *18 U.S.C. §2721*. Congress created a list of permissible uses at which time disclosure of personal information is allowed. *Id.* 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 5-digit zip code), telephone number, and medical disability information, but does not include information on vehicular accidents, driving violations, and driver's status." *18 U.S.C. 2725*.

III. Iowa has adopted a statute of incorporating the provisions of the DPPA in Iowa Code §321.11. Like the DPPA, personal information is defined in the statute as to include a person's name, but does not include information on "vehicular accidents, driving violations, and driver's status." Again, personal information may be released in accordance with specific exceptions listed in the statute. *I.C.A. §321.11*.

IV. The City of Ottumwa adopted ordinance §23-13.2 to permit the use of automated traffic enforcement systems. The ordinance allows the City, through law enforcement, to impose a civil fine for violation of speed regulations captured by an automated traffic enforcement system. *Ottumwa, IA., Code of Ordinances §23-13.2 (2017)*.

ANALYSIS AND RULING

In order to compel disclosure of the information requested, the Plaintiff must show that the Defendants are subject to the Open Records Act, the records sought are government records, and that the Defendants refused to make those government records available. The Defendants admits to being a government body as defined in §22.1 and has refused to disclose the names as requested. The definition of public records in the statute is exceeding broad to include “all records, documents, tape, or other information ...of or belonging to this state or any county, city....” *Iowa Code §22.1*. The information requested by the plaintiff would easily fit this definition. Plaintiff has shown that the names sought are the type of information belonging to the Defendants, who are subject to the Act as a government entity, constituting a public record, and the Defendants have not properly disclosed the information. Therefore, the burden shifts to the Defendants to show compliance with the Act.

The Defendants argue they are they are in compliance with the Open Records Act by providing all requested information except the names requested, which the Defendants purport is confidential under state and federal law. To support this claim, the Defendants have argued that the Driver’s Privacy Protection Act and Iowa Code §321.11, the analogous state statute, prohibit the disclosure of the names as they constitute personal information. Federal and state courts are clear in the understanding that the Driver’s Privacy Protection Act and the Iowa equivalent, §321.11, serve the function of ensuring the safety of the public by restricting the information

available from state motor vehicle departments. *Locate.Plus.Com, Inc. v. Iowa Department of Transportation*, 650 N.W.2d 609 (2002). The Iowa Supreme Court recognized that “[t]he language of the DPPA as a whole makes it plain that Congress and, in turn, our legislature, sought to limit access to personal information in state motor vehicle records by protecting citizens from the improper use of such information, while allowing access for legitimate purposes or uses.” *Id.* The plain language of the statutes state that names are personal information that is prohibited from disclosure. 18 U.S.C. 2725; I.C.A. §321.11. Iowa Code §321.11(1) holds that all records, except those made confidential or not permitted for examination pursuant to the DPPA, shall be open for public inspection. Both statutes exempt information on driving violations from their general prohibition on personal information disclosure. *Id.* The Plaintiff’s denied requests were for the names of individuals who have violated the speed regulation as reported by RedSpeed. City of Ottumwa ordinance §23-13.2 permits the use of automated traffic enforcement system such as RedSpeed. Through the ordinance, RedSpeed provides information to the Ottumwa Police Department who then decides whether a person has committed a driving violation and, if so, whether to issue a civil infraction citation. The name of speed regulation violators, which was requested, is information on driving violations, and is therefore, not confidential information under the DPPA or Iowa Code §321.11. The Defendants argument that the names requested by the Plaintiff are confidential fails. As such, the Defendants have not carried their burden of showing compliance with the Open Records Act regarding the names requested by the Plaintiff and have no justification for their nondisclosure.

Iowa Code Chapter 22 establishes the public’s right to examine governmental records as a policy of the State of Iowa. This Court’s decision supports and honors that policy allowing the

citizens to have knowledge of the actions of their government. Governmental entities are in place to serve the public, and the public has the right to see and inspect documents to ensure the public is being served in an appropriate and legal manner.

RULING AND ORDERS

IT IS THEREFORE ORDERED that the Defendants shall provide to the Plaintiff the requested information within 20 days of the date of the filing of this order, and that failure to abide by this order could result in punishment by civil contempt. This order shall be considered a Writ of Mandamus directing the City Clerk to comply with the request for production of documents.

IT IS FURTHER ORDERED that, pursuant to Iowa Code Section 22.10.3(c), the Court will consider an award of costs and reasonable attorney fees to the Plaintiff upon application with an itemization of fees attached.

IT IS FURTHER ORDERED that the Court declines to assess damages against any person violating this statute as the actions taken to decline production of documents was based upon advice from the governmental body's legal counsel.

IT IS FURTHER ORDERED that costs are assessed to the Defendants.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQEQ110695 MARK LEONARD MILLIGAN V OTTUMWA POLICE
DEPARTMENT

So Ordered

A handwritten signature in blue ink that reads "Randy S. DeGeest".

Randy S. DeGeest, District Court Judge,
Eighth Judicial District of Iowa