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## LEGAL UPDATE

Legal Services Division



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### IOWA SUPREME COURT DECISION — IOWA’S OPEN RECORDS ACT AND AUTOMATED TRAFFIC ENFORCEMENT VIOLATIONS

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly’s consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

**Milligan v. Ottumwa Police Department and City of Ottumwa**  
**Filed January 3, 2020 (amended January 21, 2020)**  
**No. 17-1961**

[www.iowacourts.gov/courtcases/7679/embed/SupremeCourtOpinion](http://www.iowacourts.gov/courtcases/7679/embed/SupremeCourtOpinion)

**Factual and Procedural Background.** The Ottumwa Police Department and City of Ottumwa, Iowa (the City) uses unmanned automatic traffic enforcement (ATE) devices provided by a third-party contractor. An ATE device detects and photographs a speeding vehicle including its license plate number. The third-party contractor documents the violation, accesses the National Law Enforcement Telecommunications System (NLETS) database to obtain the name of the registered owner of the vehicle, and uploads that information onto an internet portal. A police officer of the City then reviews the information and approves or rejects the issuance of the citation and, if approved, the third-party contractor mails the owner the citation, including photographs of the violation and information on the vehicle’s speed.

Appellee Mark Milligan (Milligan), a police sergeant driving a patrol vehicle, was detected by a City ATE device traveling 41 miles per hour in a 25 mile-per-hour speed zone. As the City was the registered owner of the vehicle, it received the citation which it forwarded to Milligan. Thereafter, Milligan submitted a written public records request to the City regarding various records relating to the City’s ATE program, including the names of violators detected speeding who had and had not been issued citations. The City provided Milligan with most of his requested information but refused to release information related to the names of violators who had and had not been issued citations based on confidentiality concerns.

After being denied access to this information, Milligan filed a petition in equity and requested an order of mandamus pursuant to Iowa Code sections 22.5 and 22.10, asserting the City violated Iowa Code chapter 22 (Iowa Open Records Act) by withholding the information without “any lawful basis” and requesting that the withheld information be released and that he be reimbursed his costs and attorney fees. The City subsequently filed a motion for summary judgment arguing that Milligan’s requested disclosure was prohibited by both federal and state law and that Milligan had failed to provide any reasons for requesting the confidential names of all individuals cited and not cited by the City. The City’s motion was denied and the case was litigated before the district court. The district court held that while the federal Driver’s Privacy Protection Act (DPPA), 18 U.S.C. section 2721, and Iowa Code section 321.11 (disclosures of Iowa Department of Transportation (IDOT) records) limit disclosure of documents that would otherwise have to be produced pursuant to Iowa Code chapter 22, information relating to driving violations is not confidential and, accordingly, ordered the City to provide Milligan with the

requested information. The district court also awarded Milligan attorney fees and nontaxable expenses. The City appealed.

**Issue.** Whether the district court erred in ordering the City to produce the identities of all individuals detected speeding contained in records related to its ATE program.

**Holding.** In a 5-2 decision, the Iowa Supreme Court (Court) reversed the district court's decision and remanded the case for further proceedings consistent with the opinion.

**Analysis.** The Court first recognized that Iowa Code chapter 22 applies to this case unless otherwise provided by either the DPPA or Iowa Code section 321.11. The Court also noted that Iowa Code section 321.11 "essentially incorporates the strictures of the DPPA into the Iowa Code."

The Court analyzed the DPPA, noting that the Act regulates the disclosure and resale of personal information contained in the records of state motor vehicle departments. The DPPA was enacted to address public safety concerns regarding easy access to personal information contained in state department of transportation records by stalkers, domestic abusers, and others, and was also intended to restrain many state practices of selling personal information contained in state motor vehicle department records to businesses and individuals. The DPPA provides that a state department of motor vehicles, in this case the IDOT, 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. Personal information includes any information that identifies an individual and a motor vehicle record includes any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the IDOT. As such, under the DPPA, the name of an individual contained on a driver's license or a motor vehicle registration constitutes confidential personal information and cannot be disclosed by the IDOT or an IDOT contractor.

The Court noted the DPPA's relevant exceptions, which include allowing disclosure of confidential information for use by a government agency; for use in connection with any civil, criminal, administrative, or arbitral proceeding; and 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. The DPPA only allows redisclosure of personal information in connection with a motor vehicle record obtained directly or indirectly from a state motor vehicle department for a use that would be a permissible basis for obtaining the information in the first instance.

The Court found that the DPPA, along with Iowa Code section 321.11, limits the City's ability to redisclose personal information obtained by its contractor from NLETS and the issue before the Court was whether there was a permissible use for the redisclosure of the information sought by Milligan. The Court noted the DPPA exceptions are to be construed narrowly and found that none of the relevant exceptions applied. Milligan is not a government agency and does not seek the records he requested to carry out a governmental function. There was insufficient proof Milligan needed the requested information for use in connection with any civil, criminal, administrative, or arbitral proceeding. Milligan's use of the records was not specifically authorized by Iowa law relating to motor vehicles or public safety.

The Court noted that under the DPPA, disclosure of information pertaining to "vehicular accidents" and "driving violations" is authorized notwithstanding the enumerated exceptions, which was ultimately the basis for the district court's decision to order the City to release the records requested by Milligan. However, the Court disagreed, stating that ATE camera citations do not involve "driving violations" as such citations are distinguishable from traditional tickets for moving violations issued in person by a law enforcement officer. ATE citations are not reported to the IDOT for the purpose of the vehicle owner's driving record and are an "alternative system" for enforcing speeding or red light laws. The Court found that such citations cannot be considered driving violations within the meaning of the DPPA or Iowa Code section 321.11. The names of the vehicle owners Milligan requested are considered "personal information" and subject to the prohibition on the disclosure of such information.

The Court found that the redisclosure of the requested names of vehicle owners was prohibited by both federal and state law. While court dockets have historically been open to the public, a motorist's personal information that is shielded from public disclosure by the DPPA and that is not filed in court is not open to public disclosure. The Court noted that, under Milligan's interpretation, law enforcement in Iowa could be required to disclose the names of individuals issued warnings who never received traffic tickets and that such a request would allow a person to obtain not just the names of individuals, but the actual vehicle license plate number associated with each individual. The Court found that a mass production of license plate numbers and name combinations could be used to facilitate stalking. As such, the Court reversed the district court's order allowing disclosure of the names of the individuals cited and not cited for ATE violations and the supplemental order awarding Milligan fees and costs.

**Dissent.** Justice Wiggins, joined by Justice Appel, dissented, finding that the Iowa Open Records Act required the City to disclose the information Milligan sought and that neither the DPPA nor Iowa Code section 321.11 precluded such disclosure. Justice Wiggins concluded that all the DPPA exceptions noted by the majority would allow the City to disclose the information sought. Justice Wiggins found that disclosure under the first exception relating to use by any government agency would be allowable given that the City was exercising a lawful function under its ordinances when it issued a notice of violation to a person accused of or under investigation for failing to obey a speed limit, and that individuals not given notice of violations are individuals under investigation for failing to obey the speed limit. Disclosure is allowed under the second exception relating to use in connection with any civil, criminal, administrative, or arbitral proceeding because the City initiates a quasi-administrative proceeding when it issues civil violations pursuant to an ATE device. Disclosure is allowed under the third exception relating to any other use specifically authorized under the laws of Iowa if such use is related to the operation of a motor vehicle or public safety because the City's ATE program is permitted by Iowa law and speed cameras relate to motor vehicles and public safety.

Justice Wiggins also disagreed with the majority's finding that ATE citations are not "driving violations," noting that Milligan was only requesting the names of individuals, not extraneous information such as license numbers, license plate numbers, or addresses, and that the release of this limited information would not be contrary to the purpose of the DPPA, which is to address public safety concerns regarding easy access by others to personal information in IDOT records and to restrain the sale of that information to businesses and individuals. Justice Wiggins would hold that the Iowa Open Records Act requires disclosure of the information Milligan requested and that neither the DPPA or Iowa Code section 321.11 protects the information requested from disclosure.

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