

# A possible workaround to MSHP's crash reports change

**Editor's note:** *The following is the most recent opinion from Hotline Attorney Dan Curry about Missouri State Highway Patrol's policy change regarding names in online crash reports. Curry's previous opinion is provided on the following page for further background about this ongoing issue.*

I want to update you on what is happening with the Missouri State Highway Patrol's online crash reports – the new nameless version. I believe strongly that the MSHP should be making the names available.

The Missouri Supreme Court told us back in 2001 that if a record is mandated to be disclosed under the law, the permissive disclosures allowed under the Missouri Sunshine Act cannot be used to close it. (*Guyer v. Kirkwood*, 38 S.W.3d 412 (Mo.banc 2001)). The Sunshine Act mandates that law enforcement "incident reports," which include names, "shall be open." See Section 610.100.2. The same is true for "logs" of incidents – which is precisely what the MSHP crash reports are.

So, the Missouri Sunshine Law mandates that these crash reports contain names, and the Sunshine Law cannot be used to close these mandated reports.

Although the MSHP did not answer my question a week ago, it has now become clear that it believes the federal Drivers Privacy Protection Act (DPPA) applies to the contents of the names that should be in the crash reports; this is the reason they cite for removing the names. I have also heard that the MSHP has directed reporters to submit a DPPA request for the records and have been charging a flat fee for the requests. All of this is consistent with the MSHP treating its crash reports as a DMV record.

From a news perspective, this is terrible. From a legal perspective, though, this is also problematic.

*"Look no further than the Missouri Department of Revenue's Form 4678, 'Request for DPPA Security Access Code.'"*

There is not any precedent that I can locate in the Eighth Circuit (which covers Missouri) for holding that the DPPA's protections apply to records that are not from the DMV, such as investigative records, incident reports or crash reports from the Missouri State Highway Patrol.

But even if the DPPA does in fact apply to the MSHP's crash reports (more on this in a future column), both the DPPA and Missouri law already provide that media can get access to the names in the records.

Look no further than the Missouri Department of Revenue's Form 4678, "Request for DPPA Security Access Code." This form contains a category access specifically for "News Media" who would use the information to "disseminate to the public in a newspaper, book, magazine, broadcast, or similar form of public communication, when such dissemination is related to the operation of a motor vehicle or to public safety." If authorized, the certificate is good for two years.

This form appears to exist because of a Missouri Statute, RSMo Section 32.091.6, which provides that confidentiality provisions on DMV information should not "limit media

access to any personal information when such access is provided by agencies or entities in the interest of public safety and is otherwise authorized by law."

This law is important because the federal DPPA – the law about which the Missouri State Highway Patrol is now concerned – specifically states that DMV information can be obtained 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."

What does this mean? Well, it is no stretch to say that any article you publish regarding a crash – especially the serious ones that tend to be news – will be concerning the operation of a motor vehicle and public safety. And Missouri law specifically allows the media to have access to these records. Therefore, under the DPPA, and Missouri law, the media should be able to have access to the names in these reports.

And the MSHP should not be concerned about giving the names to you.

Until we can get names back online in these crash reports, your paper may want to investigate obtaining the DPPA Security Access Code as an interim measure, so that you can at least get some access. I realize this is obviously an imperfect solution – the information is no longer online and instantly available, and the certification process adds another layer of bureaucracy.

However, it may also be one path to unlocking online access down the road.

