

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JEFFREY K. FRAZIER

Plaintiff,

Case No: 6:14-cv-00315-GKS-TBS

v.

TIMOTHY FRKANY,

Defendant.

_____ /

AMENDED COMPLAINT

Plaintiff, JEFFREY K. FRAZIER (“Plaintiff”), through the undersigned attorneys, hereby sues Defendant, TIMOTHY FEKANY (“Defendant”), individually for violation of 18 U.S.C. §2721-2723, and prays for damages as allowed for by 18 U.S.C. §2724. Plaintiff hereby alleges:

PARTIES

1. Plaintiff is an individual who is a resident of Geneva, Seminole County, State of Florida.
2. Defendant is at all times material to the allegations contained herein, a deputy with the Orange County Sheriff’s Office. He is sued in his individual capacity.

JURISDICTION

3. The Court has jurisdiction over the subject matter of this complaint which asserts violations of 18 United States Code §§2721-2725.
4. Upon information and belief, venue is proper in the U.S. District Court for the Middle District of Florida pursuant to 28 U.S.C. 1391(b), as the events giving rise to the claim occurred in the Middle District of Florida.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

5. Defendant's duties with the Orange County Sheriff's Office gave him access to a statewide electronic information system known as the State of Florida's Driver and Vehicle Information Database, also known as "DAVID".

6. The Florida Department of Highway Safety and Motor Vehicles data system includes information on all registered vehicles, vehicle identification numbers, tag numbers, insurance information, registered address information, driver's license information (which includes: full names, birth-dates, height, weight, driver's license numbers, home addresses, and other driver information). All of this information falls under protected information for purposes of 18 U.S.C. §2721 through §2724, and is defined as "personal information" under 18 U.S.C. §2725.

7. 18 U.S.C. §2724 states that a person who knowingly obtains, discloses or uses personal information from a motor record for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States District Court.

8. Defendant, as a deputy with the Orange County Sheriff's Office with access to Florida's Driver and Vehicle Information System was trained on the prohibitions of 18 U.S.C. §§2721 through 2725, as well as on similar Florida prohibitions against wrongful use of the data systems to access personal information.

9. Suspecting that his personal records had been illegally and dishonestly accessed, Plaintiff made a Public Record Request ("Request") pursuant to Article I, Section 24 of the

Florida Constitution and Chapter 119, Florida Statutes, to the Florida Department of Highway Safety and Motor Vehicles (FL DHSMV).

10. On or about May 18, 2013, Plaintiff received a FL DHSMV report, in response to the Request (“Report”). Exhibit A.

11. The report indicated that on February 23, 2010, Defendant made an unwarranted and illegal inquiry. Exhibit A.

12. On May 26, 2013, Plaintiff requested the Orange County Sheriff’s Office to provide a justifiable and/or legitimate reason for the February 23, 2010 inquiry of Plaintiff’s FL DHSMV personal and confidential records by Defendant. Exhibit B.

13. On May 28, 2013, Orange County Sheriff’s Office Professional Standards Section, confirmed receipt of Plaintiff’s complaint of duty misconduct. Exhibit C.

14. Thereafter, plaintiff received an Administrative Investigation Report (“Admin Report”) from the Orange County Sheriff’s Office Professional Standards Section, which concluded that Defendant, through his own admission, improperly accessed the DAVID, for reasons other than having a law enforcement purpose or function. Exhibit D.

15. Specifically, the Admin Report stipulate that prior to the completion of the investigation by the Orange County Sheriff’s Office Professional Standard Section concerning Defendant’s alleged improper use of DAVID, Defendant requested resolution of this matter through the Discipline Dispute Resolution Process. Exhibit D.

16. On or about September 10, 2013 Defendant submitted an agreement pursuant to the Discipline Dispute Resolution Process of the Orange County Sheriff’s Office, which was signed by the Defendant stating the following:

“It is alleged you improperly accessed DAVID without a legitimate purpose. This action violated our agency and external agreements that govern our use of this database”

“Based on the allegation set forth above, the Employee [Sergeant Fekany] acknowledges that he/she committed the following violation: 5.1.3 (25) Use of Authority.¹

See Exhibit E.

17. The Admin Report went on to conclude, that “[b]ased on the outcome of the Discipline Dispute Resolution Process, the allegation Sergeant Timothy Fekany violated the following Orange County Sheriff’s Office Order is **SUSTAINED**: 5.1.3 (25) Use of Authority (Category 4). Exhibit D.

18. The Orange County Sheriff’s office found Defendant guilty of misconduct and disciplined him for accessing Plaintiff’s FL DHSMV confidential records without having a legitimate business purpose. Defendant was suspended for a full shift without pay. Exhibit F.

19. On February 24, 2014 Plaintiff filed the suit against Defendant in the U.S. District Court for the Southern District of Florida.

COUNT I
(Violation of DDPA, 18 U.S.C. §2721, et seq.)

20. Plaintiff, adopting paragraphs one (1) through eighteen (19) above, hereby sues Defendant for violation of 18 U.S.C. §2721 through §2725, and hereby alleges:

21. Plaintiff provided personal information to the Florida Department of Highway Safety and Motor Vehicles, including, but not limited to, his address, color photograph, date of birth, weight, height and eye color for the purpose of acquiring and utilizing a State of Florida driver’s license.

¹ Orange County Sheriff’s Office General Order 5.13 (25) Use of Authority: “Personnel will not use their uniform or Sheriff’s equipment in any manner other than authorized by the Sheriff.”

22. The State of Florida's Driver and Vehicle Information Database also maintained Plaintiff's driving record.

23. At no time did Plaintiff provide consent for Defendant to obtain, disclose, or use his private information for anything but official law-enforcement business.

24. Intentionally obtaining, disclosing, or using driver's license information without an authorized purpose is a violation of the Driver's Privacy Protection Act ("DPPA"). The statute provides for criminal fines and civil penalties. 18 U.S.C. §2721 et seq.

25. The DPPA provides redress for violations of a person's protected interests in the privacy of his motor vehicle records and identifying information therein.

26. On February 23, 2010, Defendant did access through a data entry unit or computer system of Orange County Sheriff's Office, the Florida Department of Highway and Safety and Motor Vehicles data base as described and did input the assigned Florida Driver's License number of the Plaintiff, which retrieved and furnished to Defendant, the full name, address, date of birth, height and other information as provided by the system about Plaintiff.

27. Upon information and belief, the information retrieved and accessed by Defendant, as described in the preceding paragraphs was not obtained for a lawful law enforcement purpose and was obtained for the purpose and intent to harm, injure, harass, and invade the privacy of Plaintiff and the family of Plaintiff.

28. Defendant's inquiry did not fall within the DPPA's permitted exceptions for procurement of Plaintiff's private information.²

² The DPPA contains a list of exceptions mainly concerning information disclosures in connection with public safety, the function of government agencies, and litigation. Katherine Hutchison, *That's the Ticket: Arguing for a Narrower Interpretation of the Exceptions Clause in the Driver's Privacy Protection Act*. 7 Seventh Circuit Rev. 126, 127(2012).

29. Through Defendant's own admission, he knew that his action related to Plaintiff's personal information were in violation of the DPPA. These actions are precisely the kind of actions that Congress sought to prevent by enacting the DPPA and its statutory remedies.³

30. Defendant's willful and reckless disregard of the law, entitles Plaintiff to punitive damages to punish Defendant, and to deter such conduct of Defendant, and others similarly situated as allowed by 18 U.S.C. §2724 and for attorney's fees and costs as prescribed by 18 U.S.C. §2724. See *Reno v. Condon*, 528 U.S. 141, 144 (2000) (holding that "any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains").

31. In addition, under the DPPA, Plaintiff is entitled to a baseline liquated damages award of at least \$2,500.00 for the violation of the DPPA. 18 U.S.C. §2724(b)(1).

COUNT II
(Violation of 42 U.S.C. § 1983)

32. Plaintiff incorporates paragraphs 1-19 as though fully set forth herein

33. At all material times, the Defendant was an officer, deputy, or otherwise employed by the Orange County Sheriff's Office.

34. At no time did Plaintiff behave in a manner that would provide any legal justification for his invasion of privacy.

³ The DPPA was passed in a Congressional effort to prohibit departments of motor vehicles from disclosing personal information, including the names address, social security numbers, driver's license numbers, photographs, and other identifying information without the express consent of the individual involved. 139 Cong. Rec. E2747-48 (Nov. 3, 1993)(statement of Rep. Moran). In passing the DPPA, Congress was not only concerned about the personal safety, but personal privacy as well, as Rep. Moran confirmed in the Congressional Records, stating that "[b]y enacting this legislation, Congress will reaffirm that privacy is not a Democratic or Republican issue, but a basic human right which every person is entitled." *Id*

35. Title 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress...”

36. Defendants above described acts, have subjected Plaintiff to the deprivation of his rights of privacy, as secured to them by the DPPA, and are therefore in violation of 42 U.S.C. § 1983.

37. This statutory right to privacy under the DPPA was clearly established at the time of the Defendant’s violations.

38. As a proximate result of the Defendants' conduct as set forth above, Plaintiff has sustained damages.

39. Punitive damages are available against Defendant for his reckless and callous disregard for Plaintiff’s rights and his intentional violation of the federal law, and are hereby claimed as a matter of federal common law. *Smith v. Wade*, 461 U.S. 30 (1983).

40. Plaintiff has been required to engage the services of the undersigned attorneys to prosecute this action. Pursuant to 42 U.S.C. § 1983, Plaintiff is entitled to an award of reasonable attorneys' fees and costs in this action.

WHEREFORE, Plaintiff respectfully request this Honorable Court enter Judgment in his favor and against Defendant, award him compensatory and punitive damages in the amount to be

determined together with interest, costs and attorney's fees, along with such other relief as the Court deems just, fitting and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April 2014, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system which will send notice of the electronic filing to the following: Bruce R. Bogan, Esquire, Hilyard, Bogan & Palmer, P.A. Post Office Box, 4973 Orlando, FL 32802-4973 and Melissa J. Sydow, Esquire, Hilyard, Bogan & Palmer, P.A. Post Office Box, 4973 Orlando, FL 32802-4973.

Respectfully submitted,

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