

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00001
VERSUS JUDGE DONALD E. WALTER
ACXIOM CORPORATION, ET AL.

AND

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00013
VERSUS JUDGE DONALD E. WALTER
ACS STATE & LOCAL SOLUTIONS,
INC., ET AL.

AND

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00014
VERSUS JUDGE DONALD E. WALTER
TEXAS FARM BUREAU MUTUAL
INSURANCE COMPANY, ET AL.

AND

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00017
VERSUS JUDGE DONALD E. WALTER
SAFEWAY, INC., ET AL.

AND

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00018
VERSUS JUDGE DONALD E. WALTER
BIOMETRIC ACCESS COMPANY, ET
AL.

AND

SHARON TAYLOR, ET AL. CIVIL ACTION NO. 2:07cv00410
VERSUS JUDGE DONALD E. WALTER
FREEMAN PUBLISHING COMPANY

**INFONATION, INC.'S RESPONSE TO PLAINTIFFS' STATEMENT OF VIOLATIONS
OF THE DRIVERS' PRIVACY PROTECTION ACT AND SUPPLEMENT TO
CONSOLIDATED MOTION TO DISMISS ON COMMON ISSUES**

Pursuant to the Court's March 6, 2008 Order, (Doc. No. 54), InfoNation, Inc. ("InfoNation") files its Supplemental Response to Plaintiffs' Statement of Violations of the Drivers' Privacy Protection Act (the "Statement"), and specifically re-urges its Motion to Dismiss.¹ In the March 4 Order, the Court permitted Plaintiffs to file the Statement, and ordered Plaintiffs to "stat[e] specifically the basis for their claims against each individual defendant stating the alleged obtainment, disclosure or use of that plaintiff's information from the Texas state motor vehicle records for a purpose not permitted under the DPPA." (March 4 Order at p. 2). Plaintiffs failed to identify a single impermissible purpose.

Plaintiffs' Statement with regard to InfoNation does not allege any facts beyond the conclusory assertions in their First Amended Complaint, (Doc. No. 52). While Plaintiffs allege in the Statement that certain named Plaintiffs are aware of a business relationship with InfoNation but others are not, this contention does not materially depart from the allegation in the complaint that InfoNation "may have a permissible use under the DPPA for obtaining 'personal information' for some of the people in the database." (Compl. ¶ 70).

Plaintiffs now postulate the erroneous legal theory that InfoNation must have had an immediate use for each piece of information obtained. (*See* Statement at p. 110-111). Plaintiffs continue their strained interpretation of the DPPA and argue that entities such as InfoNation may only purchase driver information from the DPS on a case-by-case basis, and may not purchase the information in bulk because this constitutes a "continuing use." (*Id.*) Nothing in the DPPA or case law in this Circuit construing the statute supports this construction. Moreover, Plaintiffs

¹ InfoNation's Motion to Dismiss was filed on February 28, 2008. (Doc. No. 53). Plaintiffs responded to InfoNation's motion on March 14, 2008. (Doc. No. 56). InfoNation filed its reply in support of its motion on April 8, 2008. (Doc. No. 64). InfoNation's motion is fully briefed and ripe for the Court's consideration.

do not challenge the permissible purposes that InfoNation certified to the State of Texas for obtaining motor vehicle information as set forth in its interrogatory response.

Because the allegations contained in the Statement do not alter InfoNation's pending Motion to Dismiss, InfoNation hereby re-urges its motion in addition to joining in the Consolidated Motion to Dismiss on Common Issues and Response to Plaintiffs' Statement of Violations ("Consolidated Motion") filed on behalf of certain Defendants on this date. In summary, and in an abundance of caution, the bases for dismissal in InfoNation's motion are as follows:

- The Court should dismiss pursuant to Rule 12(b)(1) because no Plaintiff alleges an actual injury; therefore, Plaintiffs lack standing. In short, Plaintiffs' conclusory allegations do not allege an injury in fact, a causal connection between allegedly obtaining their personal information and their hypothetical "injuries," and redressability.
- The Court should dismiss pursuant to Rule 12(b)(6) because Plaintiffs failed to allege plausible DPPA claims for the following reasons:
 - The DPPA authorizes the purchase of bulk data—whether for use by the purchaser or for resale—and does not prohibit the non-use of personal information obtained for a permissible purpose under section 2721. 18 U.S.C. § 2721(b). Accordingly, Plaintiffs failed to state a plausible improper obtainment claim.
 - Plaintiffs failed to allege a plausible improper use claim pertaining to any of named Plaintiff's personal information, particularly because the DPPA authorizes resale. 18 U.S.C. § 2721(c).
 - The DPPA's legislative history verifies that legitimate businesses can obtain motor vehicle data for permissible purposes. This includes an authorized recipient who may resell or redisclose information for permitted purposes. 18 U.S.C. § 2721(c). Therefore, Plaintiffs' "continuing use" allegation is meritless.
 - Texas law also authorizes the purchase of bulk data. Nothing in the Texas statutes requires the immediate use of personal information. Again, Plaintiffs' "continuing use" allegation is meritless.

- Plaintiffs cannot contest InfoNation's certification and its contract with the State of Texas. Congress left enforcement to the government.

CONCLUSION

For the above reasons, the reasons set forth in InfoNation, Inc.'s Motion to Dismiss and Reply, and the reasons in the Consolidated Motion to Dismiss, the Court should dismiss Plaintiffs' claims against it with prejudice and award InfoNation, Inc. such other and further relief to which it is entitled, including costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following:

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