

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

GENO JOSEPH MARCONI

Case No. 218-2024-CR-01426

**STATE'S OBJECTION TO MOTION TO DISMISS RE:
CHARGE ID #'s 2257801C, 2257804C, 2257805C & 2257806C**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and objects to Defendant's Motion to Dismiss re: Charge ID #'s 2257801C, 2257804C, 2257805C & 2257806C. In support thereof, the State represents as follows:

1. Defendant is alleged to have provided confidential motor vehicle records pertaining to N.L. to another individual. These records include full and unredacted copies of: (1) a motor vehicle registration issued by the department to a relative of N.L.; (2) a motor vehicle registration issued by the department to N.L.; and (3) a boat registration issued to N.L. (collectively, "the N.L. records"). The N.L. records included "personal information" as defined in RSA 260:14, I(c) ("Personal information" means information in motor vehicle records that identifies a person, including a person's photograph or computerized image, social security, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information."). For providing the N.L. records to an unauthorized individual, Defendant is charged with: (1) disclosing information from a department record to an

unauthorized person contrary to RSA 260:14, IX(a) (Charge ID #2257804C); (2) using information from a department record for an unauthorized use contrary to RSA 260:14, IX(a) (Charge ID #2257806C); (3) engaging in unlawful conduct with a purpose to hinder or interfere with or retaliate against a public servant contrary to RSA 642:1, I (Charge ID #2257805C); and (4) committing an unlawful act in retaliation against a witness or informant contrary RSA 641:5 (Charge ID #2257801C).

2. In the instant motion to dismiss (“Motion”), Defendant argues that the N.L. records provided by Defendant to another individual were not “department records” within the meaning of RSA 260:14, and as such, the Defendant cannot be said to have violated RSA 260:14 substantively or as “unlawful conduct” for purposes of the Obstructing and Witness Tampering charges. Motion at ¶ 26. Defendant cites *Bourgeois v. TJX Co., Inc.*, 129 F.4th 28 (1st Cir. 2025) to argue that, despite the factual distinctions present, “the same analysis is applicable to the circumstances of this case, in which N.L. voluntarily provided copies of a boat or motor vehicle registration as part of a permit or application process.” Motion at ¶ 23. However, *Bourgeois* was wrongly decided and is factually and legally distinguishable from the issues in this case.

Bourgeois Incorrectly Interpreted Language of RSA 260:14

3. The term “department record” is not defined in RSA 260:14 and has not been interpreted by the New Hampshire Supreme Court. *Bourgeois*, 129 F.4th at 32-33, 37-38. However, in reading the statutory scheme of RSA 260:14, “motor vehicle records” clearly constitute a subcategory of “department records.” See RSA 260:14, II(a) (exempting “motor vehicle records” held by the department from disclosure under RSA 91-A, but not all “department records”).

4. “‘Motor vehicle records’ means all applications, reports required by law, **registrations**, histories, certificates, and **licenses issued or revoked by the department** relative to motor vehicles **and the information, including personal information, contained in them.**” RSA 260:14, I(a) (emphasis added). “**Proper** motor vehicle records shall be kept by the department at its office,” and “[c]opies of such records, duly attested and certified by the director, or designee, shall be as competent evidence in any court with this state **as the original record or document would be if produced by such person as the legal custodian.**” RSA 260:14, II (emphasis added).

5. In *Bourgeois*, customers at various retail stores were required to provide their driver’s licenses in order to return purchased items without a receipt. *Id.* at 32. The retail stores then “transmitted that information to a third party” in order to monitor for potentially fraudulent transactions. *Id.* The First Circuit held that the driver’s licenses thus provided were not “department records” within the meaning of RSA 260:14, as the driver’s licenses were “held and ‘freely provided’ by the license holder” to these private third-party entities. *Id.* at 37.¹ That is, because they were not “[p]roper motor vehicle records” under RSA 260:14, II(a), but rather only “[c]opies of such records” under RSA 260:14, II(b), they were not “motor vehicle records” for purposes of RSA 260:14. *Id.* at 34-36. The *Bourgeois* Court found it “telling” that RSA 260:14, VII states that “[a] person shall have access to motor vehicle records relating to such person upon proof of identity,” implying that “motor vehicle records” so used only referred to “[p]roper motor vehicle records.” *Id.* at 35.

¹ Defendant also quotes *Wolfgram v. N.H. Dep’t of Safety*, 169 N.H. 32, 38 (2016) for the proposition that “[i]n New Hampshire, a person’s motor vehicle record is available, upon request and with permission of the individual whose record is requested, to members of the public, including potential employers and insurance agencies.” *Motion* at ¶ 30. However, *Wolfgram* merely dealt with whether habitual offender should remain on a person’s motor vehicle record after annulment and not the nature of what constitutes a department record. *Id.* at 38-39.

6. However, the *Bourgeois* Court appears to not have been presented with N.H. Admin R. Saf-C 5606.06(b), which governs when a business can obtain “personal information from a driver license,” which would be dispositive of the issue in *Bourgeois* without the need to distinguish between a department record and a driver’s license. That is, this regulation makes clear that licenses (and registrations) issued to individuals are “motor vehicle records,” and regulates how private businesses can use such motor vehicle records without running afoul of RSA 260:14. See *N.H. Resident L.P. of the Lyme Timber Co. v. N.H. Dep’t of Rev. Admin.*, 162 N.H. 98, 101 (2011) (“An administrative regulation adopted by an agency pursuant to a statute is “*prima facie* evidence of the proper interpretation of the . . . statute.”) (quoting *Cagan’s Inc. v. Dep’t of Rev. Admin.*, 126 N.H. 239, 248 (1985)).²

7. In interpreting a statute, courts should “first look to the language of the statute of itself, and, if possible, construe that language according to its plain and ordinary meaning.” *Trombly v. City Cars, LLC*, 2025 N.H. 25, ¶ 9 (citation omitted). Courts should “give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Id.* (citation omitted). Courts should “construe all parts of a statute to effectuate its overall purpose, [but should] not construe statutes in isolation; instead, [courts should] construe them in harmony with the overall statutory scheme.” *Id.* (citation omitted). Administrative regulations are “*prima facie* evidence of the

² In *Stewart v. Burlington Coat Factory*, Civ. No. 23-CV-468-JL-TSM, a case in litigation while *Bourgeois* was pending, U.S. District Judge Laplante requested the State’s opinion regarding whether: (1) there is any difference between “Motor vehicle records” and “department records” under RSA 260:14; (2) a driver’s license is a “motor vehicle record” for purposes of RSA 260:14, even if in the possession of a licensee; (3) a driver’s license is a “department record” for purposes of RSA 260:14, even if in the possession of a licensee; and (4) RSA 260:14 regulates the conduct of individuals who receive records from outside the department. See Letter from Judge Laplante, attached hereto as Exhibit #1. The State responded, consistent with this objection, that: (1) there is no distinction between “motor vehicle records” and “department records;” (2-3) a driver’s license is both a “motor vehicle record” and a “department record” regardless of whether it is in the possession of the licensee; and (4) RSA 260:14 and its regulations extend to individuals who have received records from outside the department. See State of

proper interpretation of the . . . statute.” *N.H. Resident L.P. of the Lyme Timber Co.*, 162 N.H. at 101 (quotation omitted).

8. The primary issue with the *Bourgeois* reasoning is the plain language of the statute. The use of the word “[p]roper” in RSA 260:14, II(a) does not, as the *Bourgeois* Court reasoned, limit the definition of “motor vehicle records” only to these “[p]roper” records. Rather, RSA 260:14, II identifies two types of “motor vehicle records” – “[p]roper” records maintained by the department, and “[c]opies of such records” held by individuals and legally equivalent thereto. Tellingly, the language of RSA 260:14, VII does not limit a person to gaining access of their “[p]roper” motor vehicle records, but to all motor vehicle records. That is, a person is not only required to prove their identity to obtain their “[p]roper” motor vehicle records under RSA 260:14, II(a) that are kept in the possession of the department, but also to obtain motor vehicle records under RSA 260:14, II(b) “issued” to them by the department (*e.g.*, their driver’s license, motor vehicle registration, boat registration, etc.).

9. “Motor vehicle records” are defined to include “registrations . . . and licenses **issued or revoked** by the department.” RSA 260:14(a) (emphasis added). “To issue” means “[t]o send forth; to emit; to promulgate.” Black’s Law Dictionary (Revised 4th edition) at 964. “To revoke” means “[t]o annul or make void by recalling or taking back, cancel, rescind, repeal, reverse.” Id. at 1485. If the reasoning of *Bourgeois* was sound, then “[m]otor vehicle records” would refer only to those “[p]roper” records kept in the possession of the department. However, in defining “[m]otor vehicle records” to include materials that are “sen[t] forth” and “emit[ted],” which could subsequently be “recall[ed] or tak[en] back,” the legislature clearly meant for the definition of “[m]otor vehicle records” to include not only those “[p]roper” records the

New Hampshire’s *Amicus Curiae* Brief, attached hereto as Exhibit #2. *Stewart* was stayed pending the appeal in *Bourgeois*, and the State’s analysis was thus not presented to the First Circuit in *Bourgeois*.

department retained under RSA 260:14, II(a), but also those that it “issued or revoked” under RSA 260:14(b). Further, while “[p]roper” motor vehicle records are physically maintained by the department, the department also uploads this information into databases that are accessible to others, such as law enforcement officers pursuant to RSA 260:14, III. *See* RSA 260:14, III through III-d; RSA 260:14, XI-a.

10. This logic of “motor vehicle records” encompassing both types of such records under RSA 260:14, II permeates the statutory and regulatory schemes relative to driver’s licenses and vehicle registrations. *See, e.g.*, RSA 263:40 (driver’s license is the physical card “issue[d]” by the department to a person); RSA 263:1-c (“A driver’s license **issued by the state of New Hampshire** is a written declaration **to the holder** of permission to operate a motor vehicle.”) (emphasis added); RSA 263:1, 263:2 (requiring a person to have a valid driver’s license and to have it accessible in a vehicle to display on demand to a law enforcement officer); RSA 263:4, RSA 263:77, Art. V (requiring licensed driver from another state applying for a New Hampshire license to surrender existing license for return to issuing state); RSA 263:12, IV (misdemeanor for a person to refuse to surrender a license upon lawful demand by the department); N.H. Admin. R. Saf-C 5606.06 (regulating the storing, retaining, recording, or transmitting of personal information from a driver’s license, including by private businesses); N.H. Admin. R. Saf-C 5606.04 (unlawful scanning, recording, retaining, or storing of “personal information” from a driver’s license is subject to the penalties in RSA 260:14); RSA 263:12, X (misdemeanor to scan, record, retain, or store personal information from a license); N.H. Admin. R., Saf-C 1001.12 (defining “[o]riginal driver license” as “the first New Hampshire driver license **issued to a person**) (emphasis added);³ RSA 263:5-d, N.H. Admin R., Saf-C 1002.03 (requiring “positive

³ *See also* RSA 259:48, N.H. Admin. R., Saf-C 2802.04 (defining “license” as any license or permit “issued” under laws of New Hampshire or another State).

proof of identification” before a driver’s license may be issued to a person); RSA 263:44 (discussing license “issued” *to* a person *by* the department); RSA 261:58, I (department makes record of vehicle information and then department “**issue[s] to the applicant a certificate of registration**”) (emphasis added); RSA 261:59-a (person’s registration certificate is proof of valid registration); RSA 261:61 (prohibited uses of registration certificate by person to whom the department issued the registration certificate); N.H. Admin. R., Saf-C 3210.01, *et seq.* (requiring mechanics to examine “the registration certificate” of vehicles provided by owner at time of inspection to ensure accuracy and compliance with various requirements).

11. These legally equivalent copies are “registrations . . . and licenses . . . issued . . . by the department relative to motor vehicles and the information, including personal information, contained in them,” and as such meet the statutory definition of “[m]otor vehicle records.” RSA 260:14, I(a). Accordingly, *Boourgeois* incorrectly interpreted the language of RSA 260:14, and the vehicle and boat registrations allegedly disclosed and used by Defendant are properly considered “motor vehicle records” and “department records” for purposes of the statutory scheme of RSA 260:14. Defendant’s motion should accordingly be denied.

***Bourgeois* Is Factually and Legally Distinguishable**

12. Even if this Court were to find the logic of *Bourgeois* sound on the facts presented to that court relating to department records provided to a private entity, this case deals with department records provided to a governmental entity other than the Department of Safety. Generally, there are two methods by which other governmental entities may acquire department records: (1) directly from the department in response to a request by the governmental entity (RSA 260:14, III); or (2) from the individual.

13. N.H. Admin. R., Pda 511.01 requires all individuals seeking mooring permits from the Pease Development Authority – Division of Ports and Harbors (“PDA-DPH”) to provide PDA-DPH with the vessel’s “New Hampshire state registration number” (Pda 511.01(b)(7)(b)), and to attach “[a] copy of the current New Hampshire state registration for the vessel listed on the mooring permit application” (Pda 511.01(c)(1)). Applicants must “certify that the statements and information in the . . . documents are to the best of [their] knowledge and belief true, accurate, and complete,” and any false or omitted information may result in the mooring permit or placement on a mooring wait list being withdrawn by PDA-DPH. Id. at 511.01(d)(6).

14. PDA-DPH has the power to obtain these documents directly from the department under RSA 260:14, III. Presumably for convenience, PDA-DPH instead requires the applicant to provide these department records to PDA-DPH as part of the application. The applicant can provide such copies either by attaching a copy of the department record the applicant was issued or by requesting another copy from the department under RSA 260:14, VII. However, by merely obtaining the department record from the applicant instead of the department, PDA-DPH does not, as Defendant argues, exempt itself from the strictures of RSA 260:14, as such an interpretation of the statutory scheme would lead to an absurd result. *See STIHL, Inc. v. State of N.H.*, 168 N.H. 332, 338 (2015) (courts will not interpret statutory language in a manner that would lead to an absurd result).

15. The absurdity of Defendant’s proposed interpretation of the statutory language of RSA 260:14 can be illustrated by the following example. A law enforcement officer conducts separate motor-vehicle stops on two individuals, Person A and Person B. As part of the stops, the officer requests their licenses and registrations. Person A, in compliance with state law, has

the license and registration to provide to the officer. Person B does not have the license and registration to provide to the officer, so the officer has to make a SPOTS inquiry for the records from the department pursuant to RSA 260:14, III. According to Defendant's logic (and the logic of *Bourgeois*, if extended to governmental entities), the law enforcement officer could take a photograph of or otherwise copy Person A's license and registration (or the information therein) and disclose or sell that personal information without violating RSA 260:14, IX; however, the officer would be barred from doing the same to Person B under RSA 260:14, IX. To interpret the statutory scheme such that drivers have *less* privacy in their motor vehicle records if they *comply* with the laws concerning their motor vehicle records is an absurd result and would conflict with other statutory and regulatory provisions relating to driver privacy cited in ¶ 9, *supra*. Governmental entities cannot sidestep the privacy of driver's personal information merely by requiring the individual to provide copies of department records issued to a driver rather than requesting them directly from the department under RSA 260:14, III. Accordingly, even if this Court were persuaded that the logic of *Bourgeois* was correct concerning department records provided from a driver to a private entity, that logic would not apply to governmental entities requiring a copy of a driver's department record such as PDA-DPH, and Defendant's motion should be denied.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Dismiss Defendant's motion to dismiss;
- (B) Alternatively, allow the parties to seek an interlocutory appeal of this question without ruling of this Court pursuant to N.H. Sup. Ct. R. 9; and
- (C) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: June 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's e-filing system to counsel of record.

/s/ Joe M. Fincham II
Joe M. Fincham II

EXHIBIT #1

Letter from Judge Laplante

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Chambers of
Joseph N. Laplante
District Judge

Warren B. Rudman
United States Courthouse
55 Pleasant Street
Concord, New Hampshire 03301
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April 10, 2024

The Honorable John M. Formella, Esq.
Attorney General, State of New Hampshire
1 Granite Place South
Concord, NH 03301

Marta Modigliani, Esq.
Administrator, Legal Unit
N.H. Dept. of Safety.
33 Hazen Drive
Concord, NH 03305

RE: **REQUEST FOR AMICUS BRIEFING — New Hampshire Driver Privacy Act, N.H. RSA 260:14; *Stewart v. Burlington Coat Factory*, Civ. No. 23-cv-468-JL-TSM**

Dear Attorney General Formella and Attorney Modigliani,

This letter is a request for your assistance with a case pending before this court, *Stewart v. Burlington Coat Factory*, Civ. No. 23-cv-468-JL-TSM. I am requesting that you, either together or individually on behalf of your agencies, file amicus briefs or similar submissions to assist the court. See *United States v. Chin*, No. 17-2048 (1st Cir. June 20, 2018) (order appointing amicus curiae); see also *United States v. Gotti*, 755 F.Supp. 1157, 1158 (E.D.N.Y. 1991); *United States v. Louisiana*, 751 F.Supp. 608, 620 (E.D. La. 1990); *United States v. Michigan*, 116 F.R.D. 655, 660 (W.D. Mich. 1987); *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974).

Of course, this court cannot and would not “order” such briefing from a non-litigant in the case. This request is made in a spirit of federal-state comity and a high level of confidence in the legal work performed in your offices, and it is my hope that is the spirit in which you will receive it.

A motion pending in the case requires the court to interpret the **New Hampshire Driver Privacy Act, N.H. RSA 260:14**. Attached are copies of the motion to dismiss, the objection, the reply, and a brief supplemental memorandum. My request here is narrower than the issues presented by the motion.

The questions for which I request your positions are as follows:

1. Is there any difference between “motor vehicle records” as defined at N.H. RSA 260:14, I(a) and referred to in N.H. RSA 260:14, IX(b), and “department records” referred to in N.H. RSA 260:14, IX(a)?
2. Is a driver’s license a “motor vehicle record” under N.H. RSA 260:14, I(a)? If so, is such a license a “motor vehicle record” under that provision if it is in the possession of the driver licensee?
3. Is a driver’s license a “department record” as referred to under N.H. RSA 260:14, IX(a)? If so, is such a license a “department record” if it is in the possession of the driver licensee?
4. Does the Driver Privacy Act, N.H. RSA 260:14, regulate only the conduct of the Department of Safety and individuals or non-state entities that obtain information directly from the Department of Safety, or does its regulatory reach extend to the conduct of individuals and non-state entities who have not obtained information directly from the Department?

Rather than set a deadline for a response to this inquiry, and in recognition that you are under no obligation to respond to this request, I instead ask that you notify chambers regarding a response date that is satisfactory to your offices. You may make filings in that regard in the above-captioned case, or if you prefer you may notify Deputy Clerk Jadean Barthelmes at (603) 369-5374, and I will notify counsel in this litigation.

I appreciate your attention to this matter.

Sincerely,

Joseph N. Laplante
United States District Judge

Enclosures

EXHIBIT #2

State of New Hampshire's *Amicus Curiae* Brief

1. Is there any difference between “motor vehicle records” as defined at N.H. RSA 260:14, I(a) and referred to in N.H. RSA 260:14, IX(b), and “department records” referred to in N.H. RSA 260:14, IX(a)?
2. Is a driver’s license a “motor vehicle record” under N.H. RSA 260:14, I(a)? If so, is such a license a “motor vehicle record” under that provision if it is in the possession of the driver licensee?
3. Is a driver’s license a “department record” as referred to under N.H. RSA 260:14, IX(a)? If so, is such a license a “department record” if it is in the possession of the driver licensee?
4. Does the Driver Privacy Act, N.H. RSA 260:14, regulate only the conduct of the Department of Safety and individuals or non-state entities that obtain information directly from the Department of Safety, or does its regulatory reach extend to the conduct of individuals and non-state entities who have not obtained information directly from the Department?

These questions have been answered below.¹

- I. **There is no distinction between “motor vehicle records” as defined at N.H. RSA 260:14, I(a) and referred to in N.H. RSA 260:14, IX(b), and “department records” referred to in N.H. RSA 260:14, IX(a).**

To put it simply, all “department records” contemplated in RSA 260:14, IX(a) are “motor vehicle records” as defined by RSA 260:14, I(a). The purpose of the DPA is to establish the confidentiality surrounding “motor vehicle records.” “Motor vehicle records” are defined as “all applications, reports required by law, registrations, histories, certificates, and licenses issued or revoked by the department relative to motor vehicles and the information, including personal information contained in them.” RSA 260:14, I(a). These records are all generated in furtherance of the Division of Motor Vehicles’ operations. This is true regardless of whether they are generated directly by the Department, by a law enforcement agency, or a municipal agent of the Division of Motor Vehicles.

¹ Questions 2 and 3 are addressed together in Section II.

While it is true physical motor vehicle records are kept in the office of the Division of Motor Vehicles, see RSA 260:14, II(a), the information is also available in other forms. For example, license information, title and registration information, driving histories, and reports may be uploaded into databases that are accessible to others. The information contained within the databases does not lose protection under the DPA simply because it is not physically stored within the Department. Another example are accident reports generated by law enforcement agencies. See 260:14, VII-a. The reports do not lose their status under the DPA simply because they may be stored or maintained outside the Department. Regardless of where the motor vehicle records are stored, these records and the “personal information” contained within them are regulated and protected by RSA 260:14.

While the statute does not define “department record,” there is no evidence in the statute that the legislature intended for “department record” to have a different meaning than “motor vehicle record,” a term defined by the statute. The entire statutory scheme is designed to maintain an individual’s privacy and ensure the protection of their motor vehicle records. It would defy the purpose of the statute if “department record” in RSA 260:14, IX(a) was construed to mean something less than the broad scope of records contemplated by “motor vehicle records” as defined in RSA 260:14, I(a).

II. A driver’s license is both a “motor vehicle record” under N.H. RSA 260:14, I(a) and a “department record” as referred to under N.H. RSA 260:14, IX(a), and it retains this designation regardless of whether it is in the possession of the licensee.

A driver’s license is a “motor vehicle record” under N.H. RSA 260:14, I(a) because it is a “license[] issued . . . by the department . . .” As explained above, the State recognizes no distinction between “motor vehicle record” and “department record” for purposes of RSA

260:14.² Although a driver's license is generally in the possession of a licensee after it is issued by the Department, the license retains the designation as a "motor vehicle record" even when in the possession of the licensee. Drivers do not freely possess their licenses, and the laws surrounding driver's licenses indicate that the license remains the property of the Department. The license is "issued" to an individual by the Department, but the license can be suspended or revoked by the Department and an individual may be obligated to surrender the license under numerous circumstances. For example, in the event of an administrative license suspension, an individual is required to surrender their physical license to the Department. See RSA 265-A:30. If a licensed driver moves to another state and applies for a license from the new state, the individual must surrender the existing license so that it can be returned to the issuing state. See RSA 263:4; RSA 263:77, Art. V. It is a misdemeanor in New Hampshire for a person to refuse to surrender a license upon lawful demand by the Department. See RSA 263:12, IV.

The primary objective of RSA 260:14 is to protect the "personal information" contained within these records, but it also protects all information contained within a "motor vehicle record" even if that information does not fit squarely within the definition of "personal information" under RSA 260:14, I(c). Regardless of who is in the possession of the license, the information contained within the license is subject to the protections of the DPA. Pursuant to RSA 260:14, XII, the New Hampshire Department of Safety has adopted administrative rules implementing the New Hampshire Driver Privacy Act. See N.H. Admin. R. Saf-C 5600, et seq. Through N.H. Admin. R. Saf-C 5605.06, the Department further regulates the storing, retaining, recording, or transmitting of personal information from a driver's license. N.H. Admin. R. Saf-C

² For purposes of RSA 260:14, there is no distinction. Outside the DPA context, not all department records are motor vehicle records. The Department of Safety performs numerous functions that are unrelated to the DMV or an individual's motor vehicle information, and department records unrelated to DMV's functions are not protected by the DPA.

5606.04 provides that the unlawful scanning, recording, retaining, or storing of “personal information” from a driver’s license is subject to the penalties in RSA 260:14.

The Department’s authority to regulate the storage and use of personal information contained within driver licenses is additionally set forth in RSA 263:12, X, which provides that:

It shall be a misdemeanor for any person to . . . [k]nowingly scan, record, retain, or store, in any electronic form or format, personal information, as defined in RSA 260:14, obtained from any license, unless authorized by the department. Nothing in this paragraph shall prohibit a person from transferring, in non-electronic form or format, personal information contained on the face of a license to another person, provided that the consent of the license holder is obtained if the transfer is not to a law enforcement agency.

RSA 263:12, X (emphasis added). The administrative rules promulgated under RSA 260:14, XI govern when businesses can obtain “personal information from a driver license.” See N.H. Admin. R. Saf-C 5606.06(b). The DPA and other New Hampshire laws and regulations demonstrate an obvious intent to protect the information contained within driver’s licenses issued by the Department. These protections are not lost simply because a license is in the possession of a license holder.

III. The regulatory reach of the DPA extends to the conduct of individuals and non-state entities who have not obtained information directly from the Department. It is not limited to conduct of the Department of Safety and individuals or non-state entities that obtain information directly from the Department of Safety.

The DPA not only limits the circumstances upon which “motor vehicle records” can be released by the Department but it also limits the circumstances under which these records may be used or further disseminated. These limitations are in place regardless of whether the information is obtained through the Department or another source. While the DPA largely contemplates record requests made to the Department for records held by the Department, the DPA’s regulatory reach extends to the conduct of individuals and non-state entities who have not

obtained information directly from the Department. “Motor vehicle records” are not only accessed through requests made directly to the Department.³ The DPA contemplates the release of information by political subdivisions and municipal agents. RSA 260:14, III-d; RSA 260:14, XI-a. If an individual obtains motor vehicle records outside of a formal request to the Department, those records do not lose the confidentiality afforded to them under the DPA. Regardless of how a protected motor vehicle record is obtained, the use of those records is limited to the uses authorized by the Department and by the DPA. See RSA 260:14, IX.

Further, with specific regard to driver’s licenses, the Department has adopted rules pursuant to the DPA that has authorized the recording, storing, retaining, or transmitting of personal information from a driver’s license under limited circumstances. N.H. Admin. R. Saf-C 5606.06(b). This narrow authorization does not specify whether the information must initially be obtained from the Department, the license holder, or another source, but it does require the consent of the license holder. Id. Regardless of how a motor vehicle record is obtained, the record and the personal information contained therein is protected by the DPA. Again, while the DPA and the analogous federal law are designed to limit the government from disclosing motor vehicle records, the goal of these laws is to protect these records and the personal information contained within them from unauthorized dissemination and use. New Hampshire has continued to strengthen its laws to ensure that driver privacy is maintained and has demonstrated a clear intent to ensure that motor vehicle records are protected regardless of how they are obtained or where they are stored.

³ Requests to the Department are generally made through the submission of Form DSMV 505. A copy of the form can be found on the Department’s website: <https://www.dmv.nh.gov/sites/g/files/ehbemt416/files/inline-documents/dsmv505.pdf>

Respectfully Submitted,

THE NEW HAMPSHIRE DEPARTMENT OF
JUSTICE

and

THE NEW HAMPSHIRE DEPARTMENT OF
SAFETY

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amicus Curiae Brief was filed on June 24, 2024, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel for record by the Court's system.

/s/ Christina M. Wilson
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