

## Second Circuit Holds Need Reasonable Care for DMV Information

AUGUST 13, 2013

The Second Circuit recently held that companies that resell personal information that they obtain from Department of Motor Vehicle records must take reasonable precautions to ensure the information is not misused. The case, *Gordon v. Softech Int'l*, arose after an individual involved in a fender-bender obtained – for \$39 – personal information from DMV records sold through an online investigation service. The service, Arcanum Investigations, had in turn gotten the information from Softech. The person buying the information used an alias during the purchasing process. In addition, in the process for buying the information, the individual had to indicate why he wanted it. He selected from a drop-down menu, “Insurance Other.” However, the individual proceeded to use the information he had purchased to, according to the court, harass the other driver and his family. That other driver sued, and included in the suit both Softech and Arcanum. The Driver’s Privacy Protection Act prohibits disclosing personal information obtained from DMV records unless the disclosure falls into a specific, statutorily-enumerated permissible use exception. Reselling such information is similarly restricted. Use for insurance purposes is covered under the Act. The Second Circuit agreed with the lower court that Softech could not be held strictly liable for the downstream use of the information it had obtained from the DMV records. However, the Second Circuit did find that there was a question of material fact that remained for Arcanum, namely whether the individual who purchased the information was eligible under the insurance exception of the Act. In its decision, the court noted that it was “inconceivable” that a dropdown menu and check box was sufficient to meet Congressional standards to safeguard DMV information. The Second Circuit was also concerned about Arcanum’s failure to investigate the individual’s use of a false identity and whether that identity matched the credit card being used in the purchase. Thus vacated the lower court’s decision in favor of Arcanum.

**TIP: When obtaining personal information from publicly available resources like DMV records, keep in mind that you may be viewed as responsible for subsequent uses for that information. Having appropriate, reasonable safeguards in place will help limit potential exposure.**

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