



# STATE OF INDIANA

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October 10, 2014

Ms. Rachael C. Ehlich, Esq.  
State of Indiana  
C/o Indiana Bureau of Motor Vehicles  
100 N. Senate Ave.  
Indianapolis, IN 46204

*Re: Informal Inquiry 14-INF-26; BMV Records*

Dear Judge Ehlich:

This is in response to your informal inquiry. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.* and Ind. Code § 9-14-3.5 *et. seq.*

## BACKGROUND

The BMV is the custodian of information which has been deemed by the General Assembly to be personal or highly restricted. Title 9 of the Indiana Code places limits on who may access this information and how. Generally, an individual may only access information with proof of identity and a showing that the information will only be used for a limited purpose. Express written consent may be required to access highly restricted information. Your question is whether an attorney may serve as an agent or a proxy for their client when representing them in order to gain access to the information.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* Ind. Code § 5-14-3-1. The Indiana Bureau of Motor Vehicles is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Bureau's non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

The Indiana Bureau of Motor Vehicles may only release personal or highly restricted material when a requestor satisfies certain requirements. For personal information, Ind. Code § 9-14-3.5-10 holds:

The bureau may disclose certain personal information that is not highly restricted information if the person requesting the information provides proof of identity and represents that the use of the personal information will be strictly limited to at least one (1) of the following: [a list of authorized uses are enumerated]

For what is considered “highly restricted information”, Ind. Code § 9-14-3.5-10.5 holds:

Highly restricted personal information may be disclosed only as follows:

(1) With the express written consent of the person to whom the highly restricted personal information pertains.

(2) In the absence of the express written consent of the person to whom the highly restricted personal information pertains, if the person requesting the information:

(A) provides proof of identity; and

(B) represents that the use of the highly restricted personal information will be strictly limited to at least one (1) of the uses set forth in section 10(1), 10(4), 10(6), and 10(9) of this chapter.

Both statutes contemplate a potential lack of express written consent and provide an alternative way to gain access. There is a mechanism for release even without written consent. Ind. Code § 9-14-3.5-12 also addresses what steps the BMV may take to ensure disclosure is being effectuated properly:

The bureau may, before disclosing personal information, require the requesting person to satisfy certain conditions for the purpose of ascertaining:

(1) the correct identity of the requesting person;

(2) that the use of the disclosed information will be only as authorized; or

(3) that the consent of the person who is the subject of the information has been obtained.

The conditions may include the making and filing of a written application on a form prescribed by the bureau and containing all information and certification requirements required by the bureau.

The plain reading of these statutes suggests there is broad latitude give the BMV for ensuring proper disclosure. The statutes are not absolute in who may request the information – only in how it is used. The question then becomes if an attorney may act as a power-of-attorney for the purposes of requesting information on behalf of a client.

While the Courts are generally split on the agency theory as applied to the attorney-client relationship, it merits discussion in this context. The principal consequence of agency is that the agent has power "to alter the legal relations between the principal and third persons and between the principal and himself." Restatement (Second) of Agency § 12 (1958).

The Court in *Robinson v. Nipp*, 20 Ind. App. 156 (1898) held:

The authority of an agent must proceed from his principal. In ascertaining the extent of his authority we must look to what has been expressly or impliedly authorized before the act of the agent in question, or to the conduct of the principal after the act in relation thereto, by way of adopting or rejecting it.

The Title 9 information statutes do not expressly prohibit an attorney, a power-of-attorney or any other proxy to step into the shoes of an individual in order to satisfy the other requirements for disclosure. An attorney becomes a *limited* agent of a client pursuant to the scope of representation. Because it is well settled the agency-principal relationship can extend to any number of transactions, it is my opinion that attorneys may also request a client's information if it is within the scope of their representation of said client. The burden is still on the attorney to certify the usage requirements of Ind. Code § 9-14-3.5-10.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

