



Motor Vehicle Division Policy Memo # 23-07

Photo, Audio & Video Recording Policy for Driver's License Service Centers, and the Vehicle & Motor Carrier Services Counter

DATE: August 31, 2023

FROM: Melissa Gillett, Motor Vehicle Division Director

TO: All Driver and Identification Services (DIS) staff, Iowa County Treasurers and County Treasurers' staff that issue driver's licenses and non-operator's identification cards; and Vehicle & Motor Carrier Services customer counter staff

EFFECTIVE DATE: Immediately

SUBJECT

This memo establishes the Motor Vehicle Division policy regarding the use of any recording device to capture photo, audio, or video in driver's license service centers, the Vehicle & Motor Carrier Services counter, or any other area in the Motor Vehicle Division where customer applications or materials may be present. This policy memo replaces former policy memo #20-11.

BACKGROUND

There are a variety of reasons customers may want to use a recording device in one of our facilities. We also receive occasional requests from the media to film from within an MVD facility. This memo provides guidance on the considerations we need to take into account regarding the use of recording devices by customers or the media.

RELEVANT FEDERAL AND STATE STATUTES

1. Driver's Privacy Protection Act, 18 U.S.C. §2721-2725
2. Records of Department, Iowa Code section 321.11
3. Unlawful Acts, Iowa Code section 808B.2
4. Electronic and Mechanical Eavesdropping, Iowa Code section 727.8

An individual has a right to record in public places; however, this right must be balanced with our legal obligation to protect personal information. Individuals are allowed to enter and record any place open to the public as long as they are not compromising personal information or interfering with our ability to maintain our operations.

The federal Drivers Privacy Protection Act (DPPA) requires state departments of motor vehicles to protect the privacy of personally identifiable information contained in an individual's motor vehicle record. The DPPA states that we shall not knowingly disclose or otherwise make available to any person or entity personal information or highly restricted personal information except for a permissible purpose outlined in the DPPA. Iowa Code Section 321.11 likewise prohibits the department from disclosing any personally identifiable information (except for permitted disclosures under the federal DPPA) unless the person whose personal information is requested has provided express written consent allowing the disclosure.

Protected personal information includes the driver's name, address, phone number, social security number, driver's license number, photo, and certain medical or disability information. This information is typically included in any transaction taking place in one of our facilities.

For background knowledge, Iowa is a "one party consent state", which means that it is unlawful for a person to record the interaction and exchange of this private information without the consent of either the customer or the DOT employee. See Iowa Code section 808B.2 and Iowa Code section 727.8.

POLICY EXPLANATION

Media and customers are authorized to record/film in public buildings, including recording or filming employees as government officials in our Motor Vehicle Division office and driver's license service centers. However, recording devices being used in driver's license service centers or at the Vehicle & Motor Carrier Services counter, even if not intended to capture personally identifiable information, could compromise this information. **Therefore, recording or filming is not allowed in the following circumstance: Media or customers are not allowed to take a photo or a recording that may visually or audibly capture personal and decipherable customer data.** Recording or filming the interaction between a customer and DOT staff is not allowed because of the exchange of personal information that occurs. Media or customers are not allowed to take photographs at any front counter where transactions occur as they may inadvertently capture personal customer data. Media or customers should never be allowed access behind our customer counters where our computer screens, which contain customer data, can be viewed.

Who is affected by this policy?

All Iowa DOT driver's license service center staff and Vehicle & Motor Carrier Services counter staff will be affected by this policy and must follow it by not allowing any photo, audio, or video recording within a reasonable distance from the counter area of a service center while the transactions are occurring. Additionally, license-issuing counties are required to adhere to the DPPA and immediately report any non-permitted release of personal information to the Iowa DOT under the 28E agreement between DOT and the county. Any unauthorized photo, audio, or video recording conducted in a county treasurer's office during a driver's license transaction and containing a customer's protected personal information would be considered a violation of the DPPA.

Counties who do not have a 28E agreement between the DOT and the county are expected to follow the DPPA, and we recommend these counties also adhere to this policy. If a county treasurer has questions about their office being required to adhere to this policy, they should consult with their county attorney.

QUESTIONS AND ANSWERS:

WILL THIS POLICY BE POSTED PUBLICLY AT ALL SERVICE CENTERS?

We will not be posting signage in service centers concerning this policy. When necessary, we will verbally inform customers of this policy. Please keep in mind that our customers are unfamiliar with our obligations to adhere to the DPPA so we should always be very kind when explaining this policy. We often see new drivers and their families excitedly wishing to celebrate this milestone in their child's life and we do not need to be unnecessarily harsh. In these circumstances, please offer deference and explain with a gentle tone. Should a customer request to see documentation establishing this policy, you may print this memo to provide it to the customer.

IS IT OK IF A CUSTOMER IS RECORDING OR TAKING PHOTOS IN THE LOBBY, WAITING AREA, OR PARKING LOT?

Recording is prohibited at the front counter area and a reasonable distance from the counter within which audio, video, or photo recording may feasibly be able to capture a transaction occurring. This policy prohibits any recording that may capture a customer's protected personal information disclosed during a transaction because we have a duty to safeguard customer's personal information.

If the lobby, waiting area, or parking lot is located a reasonable distance from any area where protected personal information could be disclosed during a transaction, **then audio, photo, and video recording may be allowed as it is not at risk of violating the DPPA.** Staff should exercise reasonable judgment and err on the side of caution when determining if a recording device within a certain distance of a transaction may be compromising protected personal information and therefore in violation of the DPPA. The recording cannot be taken in such a way that it visually or audibly captures personal and decipherable customer data. It is reasonable and appropriate to redirect any customer or media to an area where you are confident that no personally identifiable information could be disclosed.

We recommend that service centers and counties review the physical layout of the office to minimize the potential for individuals in the lobby, waiting area or parking lots to either purposely or inadvertently record DPPA-protected information. This may include turning computer screens so that there is not a direct line-of-sight through a window.

DOES THIS POLICY APPLY TO RECORDING DONE BY INTERNAL GROUPS, SUCH AS STRATEGIC COMMUNICATIONS, FACILITIES?

The DPPA prohibits disclosure to any person or entity personal information or highly restricted personal information except for a permissible purpose outlined in the DPPA. There may be times when individuals or entities, such as DOT Strategic Communications or facilities personnel, may request to film, photograph, or otherwise record in a service center, for example, for marketing or maintenance purposes. The same restrictions that apply to customer recording apply to these entities. If the recording is at a reasonable distance from and at no risk of capturing any protected personal information being disclosed during a transaction, the recording is acceptable. If we need to record or photograph an area where customer transactions occur (such as a DL terminal) for internal (DOT) purposes, any personal information must be covered up or redacted, or it should be done off- hours when there are no transactions occurring. At all times, staff should exercise good judgement and common sense to avoid situations where we are potentially exposing a customer's personal information, even if it is for internal or official government purpose.

WHAT SHOULD WE DO IF A CUSTOMER INSISTS ON RECORDING AND COULD COMPROMISE PERSONAL INFORMATION?

If you notice a customer recording photo, audio, or video in a service center, the process is as follows:

1. Ensure any customers' personal information is safeguarded by ceasing transactions and/or covering documentation that may be present and in view.
2. Acknowledge the individual's right to record, subject to the following considerations.
3. Explain our legal obligation to adhere to the federal DPPA and that because of this obligation we have a policy prohibiting any recording that could capture personal information, even if not intended.
4. Redirect the individual to an area where personal information will not be compromised (example: parking lot, lobby, or waiting area where the individual can maintain a safe distance from any customer transaction).
5. Advise the individual the recording may not interfere with our ability to maintain our operations. Even though it is a public place, recording cannot obstruct or delay business operations, and we are not able to resume business operations until we are sure no personal information is at risk of being disclosed.
6. If the recording is not discontinued or the customer refuses to be redirected to an area where we are confident personal information will not be disclosed, do not continue to serve customers.
7. If the individual fails to cooperate, reaffirm recording is authorized but that filming cannot compromise the personal information of our customers or obstruct our business operations, and then contact local law enforcement for assistance.

CAN A CUSTOMER RECORD THEIR OWN TRANSACTION AT THE COUNTER?

Yes, a customer may give authority for the release of their own information. Therefore, an individual that would like to record their own interactions with DOT staff, even during their transaction, will not violate the DPPA. However, we must be vigilant to ensure that no other customer transactions are occurring in the proximity of any customer wishing to record their own transaction and that no other customer documentation is visible. If this situation occurs, it is appropriate to take some time to first ensure the area is completely clear of any other customer information. If it is not possible to do so or if we are busy with other customer transactions, it may not be feasible for a customer to record their own transaction. You may offer to set up a separate time for them to come back when we can safely accommodate their request. We should **never** risk disclosing customer data or personal information.

CAN A CUSTOMER RECORD THEIR OWN DRIVE EXAM?

Yes, a customer can record their own drive exam as long as there is no risk of another customer's information being captured in the recording as described in the previous question and as long as the act of recording does not impact the drive test in any way. The customer should not be handling a recording device or cell phone throughout the drive test when they are operating the vehicle as this would be a dangerous action and would cause them to fail the exam.

WHAT IF OTHER CUSTOMERS ARE BECOMING UPSET BY RECORDING?

If other customers become concerned about recording that may be occurring in one of our service centers, you can explain this policy to customers and you may even print this policy out for customers if it is helpful. Assure our customers that we have an obligation to protect their personal information under federal and state law, and we take that duty seriously. However, we are not able to prevent a customer from being recorded in public places such as our parking lots, lobby, or waiting areas when they are not engaging in a transaction with us. You may also offer that customers come back at a later time, if they would be more comfortable doing so.

WHAT ELSE CAN I ADVISE A CUSTOMER REGARDING OBTAINING PERSONAL INFORMATION?

There is a proper way to obtain personal information or highly restricted personal information from a motor vehicle record, and that is by filling out a DPPA request form 431069 and submitting it to determine if the person's request for personal information from a driver's record is permissible under the DPPA. Additionally, a customer is always able to obtain their own personal information.

ARE COUNTY TREASURER'S OFFICES REQUIRED TO FOLLOW THIS POLICY?

County treasurers are encouraged to consult with their county attorney regarding this policy. It is important to note that, pursuant to Section X of each license-issuing county's 28E agreement, counties are also required to adhere to the DPPA and immediately report any non-permitted release of personal information to the DOT. Counties who do not have a 28E agreement with the DOT may nonetheless be liable separately under state and federal law and accordingly, we strongly recommend following this policy. Any unauthorized photo, audio, or video recording conducted in a county treasurer's office during a transaction and containing a customer's protected personal information would be a violation of the DPPA.

WHAT INFORMATION IS CONSIDERED PROTECTED PERSONAL INFORMATION OR HIGHLY RESTRICTED PERSONAL INFORMATION UNDER THE DPPA?

Protected information under the DPPA includes the customer's name, address, phone number, social security number, driver's license number, photo, and certain medical or disability information. Protected information under the DPPA does not include information concerning a driver's traffic violations, license status or accidents (18 U.S.C. §2721; Iowa Code §321.11).

DOT policy includes a VIN as protected information. Staff should take care and consideration before releasing a VIN to ensure it does not violate DPPA requirements or identify an individual. DOT policy does not include the make, model and color of a vehicle as protected information as they do not identify a person.