

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JASON SENNE, on behalf of himself and all other persons similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	NO. 10 CV 05434
)	
THE VILLAGE OF PALATINE, ILLINOIS)	
a municipal corporation,)	
)	
Defendants.)	

**OBJECTION AND MEMORANDUM IN OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Village of Palatine (the "Village"), by its attorneys, Schain, Burney, Banks & Kenny, Ltd., and Judge, James & Kujawa, LLC files this its Memorandum in Opposition to Motion for Temporary Restraining Order and Preliminary Injunction and in support thereof, states as follows:

**I.
INTRODUCTION**

Plaintiff has filed the instant action seeking a temporary restraining order and preliminary injunction against a governmental body, the Village of Palatine. In its Motion, the plaintiff alleges that the standards for the preliminary relief sought have been satisfied. As set forth herein, plaintiff has failed to meet the required standards and accordingly the Village requests that the motion be denied.

II.
THE LEGAL STANDARDS FOR THE RELIEF
SOUGHT HAVE NOT BEEN SATISFIED

“In order to obtain a preliminary injunction, the moving party must show that: (1) they are reasonably likely to succeed on the merits; (2) no adequate remedy at law exists; (3) they will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the respondent will suffer if the injunction is granted; and (4) the injunction will not harm the public interest.” Joelner v. Village of Washington Park, 378 F.3d 613, 619 (7th Cir. 2004) quoting Erickson v. Trinity Theatre, Inc., 13 F.3d 1061, 1067 (7th Cir. 1994). “If the movant can meet this threshold burden, then the inquiry becomes a ‘sliding scale’ analysis where these factors are weighed against one another.” Joelner, 378 F.3d at 619 quoting AM General Corp. v. DaimlerChrysler Corp., 311 F.3d 796, 804 (7th Cir. 2002). Here, the plaintiff has wholly failed to meet the necessary requirements for the granting of preliminary relief in this case.

First, the very acts complained of by the plaintiff are permissible uses of personal information under the Drivers Privacy Protection Act (“Act”).

Plaintiff alleges that the Village violated the Drivers Privacy Protection Act, 18 U.S.C. §2721 by disclosing personal information through the issuance of parking citations. The plaintiff alleges that the information set forth on the ticket is private information which was disclosed in violation of the Act. However, the Act provides specific exemptions and the alleged Village actions fall within the permissible uses established in Section b of the Act, 18 U.S.C. A §2721(b) (1), (2) and (4).

The Act states in relevant part as follows:

(b) Permissible uses.--Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

As evidenced on the face of the Motion and Complaint and as set forth above, the information complained of by the plaintiff is being utilized by a municipal law enforcement agency in carrying out its functions, specifically involving motor vehicles and the enforcement of traffic and parking regulations in the Village of Palatine. In addition, the information is being utilized in the service of process, in this case, a parking ticket. The use of this information is specifically permitted under the Act. No other use is alleged. In

addition, the Village has filed a Motion to Dismiss the Complaint, the basis of which is adopted and incorporated herein. Accordingly, plaintiff fails to meet the first prong of the test as there is no likelihood of prevailing on the merits in this claim.

As to the second element, plaintiff has failed to allege that he has no adequate remedy at law. Therefore, plaintiff fails on this element as well.

Further, the plaintiff has not established that he will suffer irreparable harm. Plaintiff does not allege any harm other than speculation and complains about the use of the information for a purpose which, as set forth above, is permissible under the Act.

Lastly, the harm in granting an injunction which would interfere with the lawful operations of the Village in enforcing its laws far outweighs any perceived benefit to the plaintiff by the grant of an injunction. Accordingly, there is no basis for the plaintiff to be granted the extraordinary relief that he seeks.

Plaintiff cites to Congressional testimony and general speculation in concluding that he meets the standards. None of plaintiff's conclusions are sufficient to show that plaintiff is entitled to preliminary injunctive relief against the Village. Moreover, case law and further Congressional hearing testimony on the Act support the Village's use of the information not plaintiff's claim. In the case Parus v. Kroeplin, 402 F.Supp.2d 999 (W.D. Wisc. 2005), the court in quoting Senator Harkin found as follows with regard to the Act and its exemptions:

... [T]he Driver's Privacy Protection Act ... is a reasonable and practical crime fighting measure.")). congressional hearing transcripts indicate that lawmakers discussed the breadth of access law enforcement officers should be given under the Act. Senator Harkin, who supported the bill, made the following statement:

Mr. President, I want to clarify my understanding of the provisions of the Driver's Privacy Protection Act concerning the law enforcement access to driver's personal information. Under section 2720(b)(2)^{FN1}, law enforcement agencies have unrestricted access to this information in carrying out its [sic] functions.

FN1. This provision was renumbered in the final version of the Driver's Privacy Protection Act as section 2721(b)(1).

139 Cong. Rec. S15962 (Nov. 17, 1993) (remarks of Sen. Harkin). Senator Harkin went on to suggest that, "with respect to law enforcement agencies, [section 2721(b)(1)] should be interpreted to as not to in any way restrict or hinder law enforcement and crime prevention strategies," even when those strategies might include releasing personal information to the general public. *Id.* (emphasis added)

The Act includes a broad definition of the ability of law enforcement agencies to access and use motor vehicle record information. A law enforcement agency may use protected personal information so long as the agency is "carrying out" a law enforcement "function". § 2720(b)(1). Parus v. Kroepelin, 402 F.Supp.2d 999, 1006-1007 (W.D. Wisc. 2005).

By plaintiff's own motion and complaint the ticket issued was by an authorized officer of the Village to carry out the Village's law enforcement functions. Accordingly, the use of the information is permitted under the Act and plaintiff has not established any basis for the granting of a temporary restraining order or preliminary injunction against the Village.

III. CONCLUSION

Plaintiff has failed to meet any of the elements for the granting of a temporary restraining order or preliminary injunction. The Village requests that the motion be denied.

WHEREFORE, the Village of Palatine, respectfully requests that this Court deny the Motion for Temporary Restraining Order and Preliminary Injunction and grant such further and other relief as this Court deems just and proper.

Respectfully submitted,

VILLAGE OF PALATINE

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