

**IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI**

**MARSHALL COUNTY BOARD OF SUPERVISORS**

**APPELLANT**

**VS.**

**2008-CA-01744**

**STEVE LACROIX**

**APPELLEE**

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**BRIEF OF APPELLANT, MARSHALL COUNTY BOARD OF SUPERVISORS**

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**ON APPEAL FROM THE CHANCERY COURT  
OF MARSHALL COUNTY, MISSISSIPPI**

**(ORAL ARGUMENT IS NOT REQUESTED)**

**SUBMITTED BY:**

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of appeals may evaluate possible disqualification or recusal.

1. Honorable Glenn Alderson  
Chancery Court Judge  
P.O. Box 70  
Oxford, MS 38655
2. Kent E. Smith  
P.O. Drawer 849  
Holly Springs, MS 38635
3. Justin S. Cluck  
P.O. Drawer 849  
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4. Steve Lacroix  
384 River Ridge Circle  
Byhalia, MS 38611

  
JUSTIN S. CLUCK 

## **STATEMENT REGARDING ORAL ARGUMENT**

Oral argument would not be helpful in this case, as it would not aid in offering additional facts, law or argument in support of these issues. The issues before the Court are straightforward issues of law applied to the facts of this case. As such, oral argument would not be of benefit and is not requested.

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## **STATEMENT OF THE ISSUES**

1. Whether the trial court erred when finding that the records requested by Steve Lacroix were not confidential, did not contain confidential information and were not exempt from inspection pursuant to Federal law.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

This appeal arises from a Complaint for Declaratory Judgment filed by the Marshall County Board of Supervisors (hereinafter "Marshall County" or "the County") regarding a request for disclosure of personal identifying information made by Steve Lacroix (hereinafter "Lacroix") pursuant to the Mississippi Public Records Act of 1983, M.C.A. § 25-61-1, et. seq. Disclosure of this personal identifying information is governed by the Federal Drivers Privacy Protection Act of 1994, 18 U.S.C. §§ 2721 to 2725 (DPPA).

After the Complaint for Declaratory Judgment was filed, Marshall County brought the case on for hearing before Chancellor Glenn Alderson for an adjudication of the issues. Argument was heard by the Chancellor, but no evidence or sworn testimony was presented which would warrant disclosure of the personal identifying information pursuant to an exception to the DPPA.

### **B. Statement of the Facts Relevant to the Issues Presented for Review.**

On February 19, 2008, Steve Lacroix, requested that Marshall County permit him to inspect the following documents pursuant to the Mississippi Public Records Act:

Mississippi State Tax Commission Motor Vehicle Title/Registration Sys County Pre-Renewal Registration Edit County: Marshall, or any other method in use for the period of time requested which shows the name of the RES account, the account number and address of the party to be denied renewal for the time period of January 1, 2005 though the date of my inspection [February 19, 2008].

(R. 81)

No reason for the inspection was given by Lacroix at the time he delivered the request to Marshall County. The records requested by Lacroix pertain to the accounts issued by the County's solid waste contractor Resourceful Environmental Services (RES) to individual account holders in Marshall County. However, no account holder, presumably other than Lacroix himself, ever consented to Marshall County's release of their confidential account information.

Lacroix's request asked for personal and confidential information pertaining to each account holder including that individual's: (1) name; (2) individual account number; and (3) address. (Tr. 17). Further, Lacroix requested that this information be provided using the database maintained by the Mississippi State Tax Commission's Motor Vehicle Title and Registration System which also contained each person's vehicle identification number and vehicle title number. These records are used by Marshall County while performing various governmental functions by that office as well as by the Marshall County Board of Supervisors in the collection of delinquent garbage accounts.

### **C. Course of the Proceedings**

Upon receiving Lacroix's request, Marshall County filed a Complaint for Declaratory Judgment pursuant to Mississippi Rule of Civil Procedure 57. (R. 10-13). The Complaint was filed in Marshall County Chancery Court pursuant to the Mississippi Public Records Act of 1983, M.C.A. § 25-61-1, et. seq., which vests jurisdiction in Chancery Court and sets venue in the County where the public records request was made. The Complaint requested that the Court decide whether the information requested by Lacroix was subject to production under the Mississippi Public Records Act, whether the information was "personal information" as defined by the DPPA which prevents



disclosure of any information about an individual obtained in connection with a motor vehicle record and whether any exception to the DPPA applied which would permit disclosure by Marshall County to Lacroix.

A final hearing on the Complaint for Declaratory Judgment was heard by Chancellor Glenn Alderson on September 25, 2008. The Chancellor heard argument from Marshall County that the records contained personal information which prohibited disclosure pursuant to the DPPA. In response Lacroix argued, but did not testify under oath, that although the DPPA did apply to the request, an exception for records produced in connection with a litigation proceeding permitted disclosure of the personal information. (Tr. 13). Lacroix further argued that the litigation exception applied in the matter at bar because he had filed "an action in District Court" that he required the information for, specifically for "evidentiary issues." (Tr. 13-14). However, Lacroix never put forward any proof to substantiate his claim that the public records request was related in any way to the "action in District Court" and even failed to state the style of the Federal action, what issues it had in common with the public record request and made no record setting forth the basis of the alleged "evidentiary issues" that he needed the information for. Instead of conducting an evidentiary hearing to substantiate Lacroix's litigation exception, the Chancellor responded by stating that "I did not know that you had an action in District Court." (Tr. 14).

Based solely upon Lacroix's allegation that he had an "action in District Court" the Chancellor found that none of this information was confidential because the "information could be obtained anywhere in the courthouse" in the land records, on deeds, on copies of deeds or on the windshield of a person's vehicle. (Tr.17-18).

The Chancellor found that the records requested by Lacroix were not confidential and did not contain confidential information. (R. 80-82). Further, the Chancellor misclassified the information as “confidential information” instead of classifying it as a category of information defined in the DPPA. (R. 82). Finally, the Chancellor ruled that the records were public records as contemplated by the Mississippi Public Records Act but did not cite any provision of the DPPA which would have permitted the records to be disclosed pursuant to any exception set forth in the DPPA. (R. 80-82).

## **STANDARD OF REVIEW**

The standard of review for questions of law, including motions for declaratory judgment, is *de novo*. South Carolina Insurance Co. v. Keymon, 974 So.2d 226, 229 (Miss. 2008).

## **SUMMARY OF THE ARGUMENT**

Pursuant to the Federal Drivers Privacy Protection Act of 1994, (DPPA) disclosure by state departments of motor vehicles and their agents of drivers' personal information is prohibited except for a number of statutorily defined permissible uses. 18 U.S.C. §§ 2721 to 2725.

In order to permit disclosure under the DPPA, the requested information must first be classified into one of the two categories of information listed in the DPPA, either "personal information" or "highly restricted personal information." 18 U.S.C. § 2725 (3) and (4). After the information is categorized, evidence must be presented to decide whether one of fourteen exceptions to the DPPA applies which would permit disclosure of the information.

In the matter at bar, the Chancellor committed error when he classified the requested information as "confidential information" instead of classifying it according to the categories set forth in the DPPA. He also committed error when he found that no Federal law prohibited disclosure of the information because Lacroix presented no evidence to substantiate his claimed exception.

## ARGUMENT

### **A. The Chancellor Erred When Failing to Classify The Information Under A Category Listed In The Federal Drivers Privacy Protection Act Of 1994**

In February of 2008, Steve Lacroix made a request pursuant to the Mississippi Public Records Act of 1983, M.C.A. § 25-61-1, et. seq. to inspect the following public records in Marshall County:

Mississippi State Tax Commission Motor Vehicle Title/Registration Sys County Pre-Renewal Registration Edit County: Marshall, or any other method in use for the period of time requested which shows the name of the RES account, the account number and address of the party to be denied renewal for the time period of January 1, 2005 though the date of my inspection [February 19, 2008].

At the final hearing on the Complaint for Declaratory Judgment, Chancellor Glenn Alderson was provided the State Tax Commission motor vehicle records used by Marshall County to assess county garbage fees. After an *in camera* inspection, the Chancellor found that the records contained the following information: (1) the individual's name; (2) address; (3) vehicle title number; and (4) vehicle identification number. (Tr. 17). The Chancellor then found that this information was not "confidential" but made no finding as to whether it was "personal information" as contemplated by the Federal Drivers Privacy Protection Act of 1994.

Pursuant to the Public Records Act, Marshall County would have been required to disclose the information requested by Lacroix which was compiled in the County's motor vehicle records. However, in 1997, the United States Congress enacted the Federal Drivers Privacy Protection Act of 1994, (DPPA), which prohibits the disclosure of personal information contained in state motor vehicle records. 18 U.S.C. §§ 2721 to 2725. The DPPA was enacted to respond to the privacy and safety concerns arising from

broad access to the information contained in state motor vehicle department records. See generally, 18 U.S.C. §§ 2721 to 2725; Deborah F. Buckman, *Validity, Construction and Application of the Federal Driver's Privacy Protection Act*, 183 A.L.R. Fed. 37 (2007). The DPPA's original purpose was as a crime prevention measure as well as "to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government." S.Res. 1589, 103<sup>rd</sup> Cong. §1(b), 139 Cong. Rec. 26,266 (1993)(enacted).

Prior to enactment of the DPPA, there were virtually no mechanisms in place to prevent widespread disclosure of personal information to the public, which created safety concerns for the public at large whose names, address, phone numbers, etc., were freely available to potential criminals. "The Act generally restricts and regulates disclosure by state departments of motor vehicles and their agents of drivers' personal information without their affirmative consent, except for a number of statutorily defined permissible uses." Deborah F. Buckman, *Validity, Construction and Application of the Federal Driver's Privacy Protection Act*, 183 A.L.R. Fed. 37 (2007).

After the enactment of the DPPA, this personal information became exempt from disclosure under the Mississippi Public Records Act pursuant to M.C.A. § 25-61-11 which states in pertinent part:

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state of the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public records shall be exempt from the provisions of this chapter.

It is also clear that even without the provisions of M.C.A. § 25-61-11, the Supremacy Clause of the United States Constitution would preempt the Mississippi Public Records Act. Article VI, Section 2 of the United States Constitution (“the Supremacy Clause”) Accordingly, the governing authority for Lacroix’s request was not the Mississippi Public Records Act, as held by Chancellor Alderson, but instead is controlled by the DPPA.

When Lacroix made his request, Marshall County’s disclosure was limited by the following provisions of the DPPA:

- (a) A state department of motor vehicle, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:
  - 1. Personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or
  - 2. Highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6) and (b)(9).

See 18 U.S.C. §§ 2721(a). Lacroix’s request would therefore have required Marshall County to disclose “personal information” regarding thousands of taxpayers in its county. Under the DPPA the term “personal information” is defined as information “that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information.” See 18 U.S.C. § 2725(3). Contrary to the Chancellor’s analysis, there is no category of information defined as “confidential.”

In his public records request, Lacroix requested information from the State of Mississippi State Tax Commission/Motor Vehicle Title database which revealed the name of citizens of Marshall County with garbage accounts through a private solid waste provider. His request also included the account numbers for the garbage accounts, the individuals vehicle identification number, vehicle title number and the address of those individuals, all of which are maintained in the State of Mississippi's Motor Vehicle database. Under the DPPA, Marshall County was strictly prohibited from disclosing specific names of individuals in the Motor Vehicle database, the person's address, their vehicle identification number and was arguably prohibited from providing the account number of those individuals. The only information Marshall County was permitted to disclose to Lacroix was his own personal information pursuant to 18 U.S.C. § 2721.

Marshall County respectfully submits that the Chancellor used the wrong standard to determine exactly what type of information Lacroix was requesting. As set forth above, the DPPA specifically creates two categories of information and defines the information according to that classification. In addition to the category of information defined as "personal information" which would include a person's name and address, the DPPA also creates a category of "highly restricted personal information" which is defined as an individual's photograph or image, social security number, medical or disability information." 18 U.S.C. § 2725(4). Vehicle identification numbers and vehicle title numbers, although not specifically enumerated in the statute could arguably be classified as "highly restricted personal information." In order to decide whether the information requested by Lacroix was subject to production, it must first be classified correctly. The Chancellor therefore committed error when he classified it as "confidential" information



when there is no such category of information in the DPPA. Accordingly, this Court should reverse the Chancellor's finding that the information was "confidential," and categorize each piece of information as either "personal information" or "highly restricted personal information." Marshall County respectfully submits that names and addresses are personal information and that garbage account numbers, vehicle identification numbers and vehicle title numbers are highly restricted personal information.

**B. The Chancellor Erred When Finding That The Records Are Not Exempt From Inspection**

Next, depending upon the classification of the information into one of the two categories set forth in the DPPA, there must next be a determination as to whether there is any exception under the DPPA which would permit disclosure. At hearing, Lacroix argued that his request was not prohibited by the DPPA due to an exception which permits the disclosure of such information if it is used in connection with a "civil criminal, administrative, or arbitral proceeding in any Federal, State, or local court agency." 18 U.S.C. § 2721(b)(4) (the "litigation exception"). The Chancellor questioned Lacroix about the purpose of his request and Lacroix argued that the information was necessary for "evidentiary" issues in a Federal case, which Lacroix had filed one or two weeks before the hearing. (Tr. 13-14). However, Lacroix did not produce any evidence which explained the basis of the litigation and how it applied to his February 19, 2008 public information request.

In making this argument, Lacroix also seems to have misunderstood the basis of this exception as it applies only if the information is necessary for use regarding "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.” 18 U.S.C. § 2721(b)(4). There is no exception listed for “evidentiary” issues. The Chancellor never inquired into the substance of the Federal proceeding and never required Lacroix to put forward any proof to substantiate the factual basis which would permit the Chancellor to find an exception to the DPPA. Specifically, the Chancellor committed error when he failed to make a record which resolved the following issues to permit disclosure under the DPPA:

- (1) What Court the litigation was pending in;
- (2) What parties were involved;
- (3) Whether consent was given by the individuals for disclosure of their information;
- (4) How did the public records request pertain to the Federal litigation;
- (5) What was the basis for Lacroix’s use of this information in the Federal litigation;
- (6) Was the information being used for service of process;
- (7) Was the information being used to execute or enforce a judgment; and
- (8) Was there any Federal or State Court Order to release this information

Instead of making an evidentiary ruling setting forth the reasons that the requested information was exempt from the DPPA, the Chancellor ordered disclosure of this information to Lacroix without any analysis of the permissible uses under 18 U.S.C. § 2721(b)(4) and without any evidentiary support for Lacroix’s purported use of the information. The Chancellor based his ruling on his assumption that the “information could be obtained anywhere in the courthouse” in the land records, on deeds, on copies of deeds or on the windshield of a person’s vehicle. (Tr. 17-18). This however is not the standard for disclosing the information under the DPPA which requires evidentiary proof underlying any claimed exception.

Since all of the information requested by Lacroix was exempt from disclosure pursuant to the DPPA, Lacroix did not present sufficient evidence at hearing to permit

disclosure of the information under the litigation exception. Marshall County submits that Lacroix's failure to present any evidence regarding his claimed exception, prohibits disclosure and the Chancellor's Order should be reversed.

### **CONCLUSION**

For the foregoing reasons, Marshall County respectfully submits that this Honorable Court should reverse Chancellor Alderson's October 1, 2008, Order and find that the records requested by Steve Lacroix contain personal information, highly restricted personal information and that the litigation exception to the DPPA is inapplicable to Lacroix's February 19, 2008, public information request.

**RESPECTFULLY SUBMITTED**, this the 2<sup>nd</sup> day of March, 2009.

**MARSHALL COUNTY BOARD OF  
SUPERVISORS, Appellant**

By: 

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# **CERTIFICATE OF SERVICE**

I, the undersigned attorney of record, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the **BRIEF OF APPELLANT, MARSHALL COUNTY BOARD OF SUPERVISORS**, to the following:

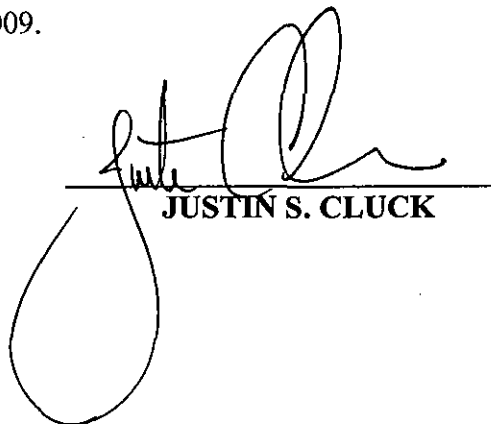
Steve Lacroix  
384 River Ridge Circle  
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**Appellee, *pro se***

Honorable Glenn Alderson  
Chancery Court Judge  
P.O. Box 70  
Oxford, MS 38655

**Trial Court Judge**

THIS, the 23 day of March, 2009.



JUSTIN S. CLUCK