



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 27, 2009

James H. Burch  
Acting Director  
Bureau of Justice Assistance  
U.S. Department of Justice  
20 Mass. Ave., N.W.  
Washington, D.C. 20530

Re: Release of Pennsylvania Vehicle  
Record Information in  
NMVTIS

Dear Mr. Burch:

This letter is by way of follow-up to recent conversations on the above subject between your office, the Commonwealth of Pennsylvania and the American Association of Motor Vehicle Administrators (AAMVA). Confirming these conversations, it is the position of the Commonwealth that Pennsylvania vehicle record information lodged in the National Motor Vehicle Title Information System (NMVTIS) cannot be made available to consumers until and unless provision is made for payment to the Commonwealth of its \$5.00 statutory fee for each and every Pennsylvania record provided.

The Commonwealth's position on this issue is based on Section 1955 (a) of the Vehicle Code, 75 Pa. C.S. § 1955 (a), which was originally enacted in 1980 and which reads:

The fee for a copy of written or electronic information relating to a driver *registration, title* or security interest *shall* be \$5. (Emphasis added)

In Pennsylvania, as I daresay is the case in most jurisdictions, the use of the term "shall" in a statute to qualify an action means that said action must be considered mandatory subject only to specific statutory exceptions. The exemptions to the fee requirements of the Vehicle Code are set forth in Sections 1901 and 1902 of the Vehicle Code, 75 Pa. C.S. §§ 1901 and 1902. Political subdivisions, another state and the Federal Government are all expressly exempt from fees (see § 1901 (a) (2) (5) and (6)), hence access by law enforcement or another state to Pennsylvania vehicle record information in NMVTIS such has occurred to date is not subject to the \$5.00 per record charge. There is no comparable exemption in Pennsylvania law for the provision of vehicle record information to consumers. The Commonwealth therefore has no discretion to take

James H. Burch  
January 27, 2009  
Page 2

any position other than that it must receive \$5.00 each and every time a Pennsylvania vehicle record in NMVTIS is provided to a consumer.

It is important to note that the Commonwealth's position here is in no way inconsistent with the fee provisions of the Anti Car Theft Act of 1992 (ACTA). Section 202 (a) (3) of ACTA, in speaking to limitations on the fees collected and retained by the operator of NMVTIS, i.e., AAMVA, expressly exempts from those limitations "fees collected by the operator and passed on to a State or other entity providing information to the operator." While the Department of Justice has chosen to ignore this language in its proposed rulemaking of September 22, 2008, addressing the implementation of NMVTIS, it is clear from ACTA that Congress had no intention to establish a system that would in any way result in a deprivation of revenues being derived by the states from the sale of vehicle records for consumer use.

In conclusion, until such time as this issue is resolved to the satisfaction of the Commonwealth, we have instructed AAMVA that it is not at liberty to disclose Pennsylvania vehicle record information for consumer purposes. AAMVA has represented to the Commonwealth that it will abide by this restriction.

Please feel free to contact me at your convenience if you have any questions. The Commonwealth looks forward to continuing discussions with you and AAMVA on this matter in the near future.

Sincerely,

Robert J. Shea  
Assistant Chief Counsel

2200/RJS/na

cc: Peter D. Leary, Trial Attorney, U.S. Department of Justice  
Neil Shuster, President and CEO, AAMVA  
Kurt J. Myers, Deputy Secretary for Safety Administration, PENNDOT  
Anita Wasko, Director, Bureau of Motor Vehicle, PENNDOT