



**Department of Motor Vehicles Code Citation Response  
to the CLETS (Draft) Strategic Plan 2014; Goal #8**

VC §1808.5, establishes all records of the department relating to the physical condition of any person are confidential and not open to public inspection. This is considered applicable to a photo since it provides information relating to the physical condition of the DL/ID holder.

VC §§12800.5 and 13005.5, explicitly restrict the release of DL/ID photos. The department is prohibited, unless requested by the subject of the photo, from distributing, selling the picture or photo, or any information pertaining to the physical characteristics of the subject to any private individual or any firm, co-partnership, association or corporation. The statutes referenced in this paragraph do not directly apply to NLETS; however, provide examples of existing restrictions regarding the release of DL/ID photos.

The Federal Driver's Privacy Protection Act (DPPA) [United States Code, Title 18, §§2721-2725], prohibits generally, the disclosure of highly restricted personal information (includes photos) to any person or entity, however, there are exceptions. Photos are subject to mandatory disclosure in connection with certain federal laws pertaining to motor vehicles. In addition, the DPPA authorizes photo release in four discretionary categories.

An opinion from the California Attorney General in 1996 stated the discretionary release categories of the DPPA allow a state to authorize disclosure, however, access to the information is prohibited if the Legislature does not "affirmatively authorize" disclosure in the specified circumstances. No affirmative authorization is found in existing state statutes that would require or allow the transmission and wholesale sharing of DL/ID photos between Cal-Photo and NLETS.

All government agencies, including law enforcement requesting DMV record information must complete and submit a Government Requester Account Application (INF 1130). Each government requester is required to follow security and other requirements. In the General Security Requirements section of the form, the government requester agrees to not sell, retain, distribute, provide or transfer any record information or portion of a record acquired under the government requester account agreement, except as authorized by the department.

CCR, Title 13, Article 5, §350.42, states any use of DMV information for a purpose other than stated in the approved INF 1130 application is prohibited. Section C-9 of the INF 1130 states the agency shall not sell, retain, distribute, provide or transfer any record information or portion of the record information except as authorized by the department.

DMV executed an Inter-Agency Agreement (IAA) with DOJ to allow for access to photos in DMV files. The agreement requires DOJ to not transfer, distribute, enter into any third party agreement or otherwise provide images to any unauthorized entity or use images for any unauthorized purposes. In addition, DOJ shall not retain images for the purposes of creating a database unless specifically authorized in writing by DMV's Information Services Branch Chief.



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Currently, NLETS is authorized to obtain DL/ID photos from CLETS/Cal-Photo on a “one-in/one-out” basis for law enforcement and other government agencies authorized by statute and approved by DOJ and DMV. Authorized law enforcement and government agencies making a request for DL/ID photos through DMV, CLETS, or NLETS are required to provide identifying points of information to ensure the correct photo is provided to the requester and for tracking the release and receipt of the photo.

DMV and DOJ are required to maintain an accurate accounting of the date, nature, and purpose of each disclosure of personal information pursuant to CC §1798.25. The accounting is required to include the name, title, and business address of the person or agency to which the disclosure was made. Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government are considered disclosures pursuant to CC §1798.24(e) for the purpose of meeting these requirements.

Accordingly, DMV in meeting its obligations to maintain an accurate accounting of each disclosure of personal information has the authority to audit DOJ for the purpose of determining compliance with statute, regulations, and other requirements contained in the IAA.

Conversely, the transmission and wholesale sharing of DL/ID photos between Cal-Photo and NLETS raises significant concerns. DMV has a statutory and regulatory obligation to protect all information, including photos that are maintained in the department’s database. There is no viable method for DMV to account for each disclosure of California DL/ID photos via NLETS under this proposal. The proposed expansion of photo-sharing between CLETS/Cal-Photo and NLETS may open the door to random accessing of photos without providing identifying points of information. The inability to account for each California DL/ID photo disclosure via NLETS would make it difficult, if not impossible to track the source of a security breach involving the NLETS network.

At this time, DMV cannot support Goal #8 to the extent it depends on the use of any California DMV information, specifically DL/ID photos. Existing statute and regulations require a vast array of security measures to protect DMV record information for the reasons stated.

**References**

***California Vehicle Code, §§1808.5, 1810.5, 12800.5, and 13005.5***

<http://www.dmv.ca.gov/portal/dmv/detail/pubs/vctop/vc/d2/c1/a3/1808.5>

<http://www.dmv.ca.gov/portal/dmv/detail/pubs/vctop/vc/d2/c1/a3/1810.5>

<http://www.dmv.ca.gov/portal/dmv/detail/pubs/vctop/vc/d6/c1/a3/12800.5>

<http://www.dmv.ca.gov/portal/dmv/detail/pubs/vctop/vc/d6/c1/a5/13005.5>



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**References, continued**

**Information Practices Act (California Civil Code) §§1798, 1798.1(c), 1798.3(a), 1798.24,  
and 1798.25**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798)

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.1.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.1)

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.3.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.3)

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.24.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.24)

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1798.25.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.25)

**California Code of Regulations, Title 13, Article 5, §§350.10, and 350.42**

Section 350.10

[https://govt.westlaw.com/calregs/Document/I9DF7BEC0D46811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I9DF7BEC0D46811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Section 350.42

[https://govt.westlaw.com/calregs/Document/1A1BD7950D46811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/1A1BD7950D46811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

**Federal Driver's Privacy Protection Act, U.S. Code, Title 18, §§2721-2725**

[http://uscode.house.gov/view.xhtml?req=\(title:18 section:2721 edition:prelim\) OR \(granuleid:USC-prelim-title18-section2721\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:18 section:2721 edition:prelim) OR (granuleid:USC-prelim-title18-section2721)&f=treesort&edition=prelim&num=0&jumpTo=true)

**Attorney General Opinion: 79 Ops. Cal. Atty. Gen. 76 (June 10, 1996)**

<http://oag.ca.gov/system/files/opinions/pdfs/95-805.pdf?>