

Informal Working Draft and Request for Informal Comments for Implementation of Senate Bill 15
Texas Administrative Code, Title 43, Chapter 217, Subchapter F

Posting date: December 17, 2021
Comments due: January 17, 2022

The Texas Department of Motor Vehicles (TxDMV) has prepared an informal working draft of amendments to its rules to implement Senate Bill 15 from the 2021 regular legislative session, the Texas Consumer Privacy Act Phase I.

The Texas Consumer Privacy Act Phase I, amends Transportation Code Chapter 730 to specify the authorized use of personal information obtained in connection with motor vehicle records, provide for the deletion of certain information, authorize civil suits for the unauthorized use of information, establishing contract and annual reporting requirements for recipients of personal information in bulk, and other changes.

This is an informal posting intended to gather comments from the public, and is not a formal publication for rulemaking.

To provide input

TxDmv is seeking comments from the public on the informal working draft, and specifically invites feedback on the questions below.

If you want to comment or provide any points of clarification on this informal posting, submit your written comments by 5:00 p.m., central time, on January 17, 2022. Send written comments by email to Rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731.

TxDmv requests comments on the following questions:

1. Do the requirements under informal working draft Section 217.123(c) for law enforcement to provide current law enforcement credentials, electronic verification, or a written statement from a supervising officer on letterhead make it easier to receive personal information for criminal investigations than the existing rule that is limited to providing current law enforcement credentials?
2. Does the requirement to enter into an in-bulk contract with the department for any request over 250 individual motor vehicle records or for information the requestor intends to redisclose for compensation provide enough clarity to those persons that will be required to enter into a contract prior to receiving any personal information? In other words, is it clear that any requests that result in the disclosure of 250 or more motor vehicle records containing personal information will be required to enter into an in-bulk contract prior to the release of records?
3. Does the informal working draft of Section 217.1231 clearly establish the required documentation that must be submitted to the department prior to entering into an in-bulk contract?

4. The department is considering ways to enter into in-bulk contracts required by Transportation Code Section 730.014. As a requestor, are there any special circumstances the department should consider in developing the in-bulk contract requirements under the statute?
5. Are there any additional comments or points of clarification that the rule should address?

Informal working draft

**CHAPTER 217. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER F. MOTOR VEHICLE RECORDS
43 TAC §§ 217.122 - 127.1232, 127.125 - 127.131**

§217.122. Definitions.

(a) Words and terms defined in Transportation Code Chapter 730 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ~~[Authorized recipient--A person receiving motor vehicle records as defined by this subchapter, in a manner authorized by Transportation Code, Chapter 730.]~~

~~[(2)] Department--Texas Department of Motor Vehicles.~~

~~[(3)] Motor vehicle records--Information regarding the titling or registration of motor vehicles, which may include the make, vehicle identification number, year, model, body style, license number of a motor vehicle, and the name, address, and social security number of an owner or lienholder.]~~

~~[(4)] Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, telephone number, medical or disability information, license plate number, or address other than the postal routing code.]~~

(2) ~~[(5)] Requestor--A person, this state, or an agency of this state seeking personal information contained in motor vehicle records directly from the department.~~

(3) [(6)] Service agreement--A written contractual agreement that allows a person, this state, or an agency of this state [individuals, businesses or governmental entities or institutions] to electronically access individual records from the department's motor vehicle records.

(4) [(7)] Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

(5) [(8)] Signature--Includes an electronic signature, as defined by Transportation Code §501.172.

(6) In bulk--Personal information in motor vehicle records responsive to a request under Transportation Code §730.007 of at least 250 individual records or that will be redisclosed for compensation under Transportation Code §730.013.

(7) Batch Inquiry--Electronic, non-recurring request for multiple Texas license plate numbers or vehicle identification numbers submitted to the department under a service agreement with results disclosed in a batch via SFTP transfer. The department makes a disclosure for each individual record in a batch.

(8) MVInet Access--Electronic access under a service agreement to the department's motor vehicle registration and title database, with the ability to query individual records by a Texas license plate number, vehicle identification number, placard number, or current or previous document number. The department makes a disclosure each time a query of the system is made.

(9) Master File--An in-bulk file containing all the department's active and inactive registration and title records, which the department discloses via SFTP transfer.

(10) Weekly Update--An in-bulk file containing any new and renewed vehicle registration and title records from the previous week, which the department discloses via SFTP transfer.

(11) Dealer/Supplemental File--A pair of in-bulk files containing registration and title transactions processed by dealers and the dealers' information, which the department updates weekly and discloses via SFTP transfer.

(12) Specialty Plates File--An in-bulk file containing Texas specialty license plate records, which the department updates daily and discloses via SFTP transfer.

(13) eTAG File--An in-bulk file containing department records related to new or updated eTAGs, vehicle transfer notifications, and plate to owner records, which the department discloses on a weekly or daily basis via SFTP transfer.

§217.123. Access to Individual ~~[Motor Vehicle]~~ Records.

(a) ~~[Request for records.]~~ A requestor seeking individual records shall submit a written request on a ~~[the]~~ form required by the department. ~~[Information will be released only in accordance with Title 18 U.S.C. §2721 et seq.; Transportation Code, Chapter 730; Government Code, §552.130; and this subchapter.]~~ A completed and properly executed form must include ~~[, at a minimum]:~~

(1) the name and address of the requestor;

(2) a description of the requested individual records, including the Texas license plate number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) proof [a photocopy] of the requestor's identity, in accordance with subsections (b) and (c) of this section [identification];

(4) a statement that the requestor ~~[requested information may only be released if the requestor]~~

(A) is the subject of the record,

(B) [if the requestor] has the written consent of the person who is [authorization for release from] the subject of the record, or

(C) will use the personal information strictly [if the intended use is] for a permitted use under Transportation Code Chapter 730, as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) ~~[Identification required.]~~ A requestor not seeking personal information for use by a law enforcement agency must provide ~~[may not apply for receipt of personal information unless the requestor presents]~~ current photo identification containing a unique identification number. The identification ~~[document]~~ must be a:

(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;

(5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code [7] Chapter 411, Subchapter H; or

(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement. ~~[copy of current law enforcement credentials if the requestor is a law enforcement officer.]~~

(c) A requestor seeking personal information for use by a law enforcement agency must:

(1) provide the requestor's current law enforcement credentials;

(2) electronically submit the request in a manner that the department can verify that the requestor is acting on behalf of a law enforcement agency; or

(3) provide a written statement from an officer supervising the requestor on the law enforcement agency's letterhead stating that the requestor is not authorized to present current law enforcement credentials and identifying the incident or case number for which the personal information is needed.

(d) [Electronic access.] The department may provide electronic access to individual records [make motor vehicle records available] under the terms of a [written] service agreement.

(1) A requestor must provide the department the following information, sufficient for the department, to enter into a [Agreement with business or individuals. The written] service agreement [with a business or individual must contain]:

(A) the specified purpose of the agreement, including the requestor's permitted use under Transportation Code Chapter 730;

(B) the name and address of the person, this state, or an agency of this state contracting with the department; [an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records);]

(C) proof of the requestor's identity, in accordance with subsections (b) and (c) of this section; [termination and default provisions;]

(D) the signature of the requestor or an authorized official of the requestor [contractor's signature];

(E) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code [.]

Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(F) any documentation required under §217.125 of this title (relating to Additional Documentation Related to Permitted Uses). ~~[the statements required by subsection (a) of this section].~~

(2) Unless the requestor is exempt from the payment of fees, a service agreement must contain an adjustable account, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records). Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.

(3) An agency of this state may attach to the service agreement a statement citing the agency's authority to obtain social security number information, if applicable.

~~[(2) Agreements with Texas governmental entities.~~

~~(A) The written service agreement with a Texas governmental entity must contain:~~

~~(i) the specified purpose of the agreement;~~

~~(ii) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;~~

~~(iii) the statements required by subsection (a) of this section;~~

~~(iv) the signature of an authorized official; and~~

~~(v) an attached statement citing the entity's authority to obtain social security number information, if applicable.~~

~~_____ (B) Texas governmental entities, as defined in Government Code, §2252.001, and including the Texas Law Enforcement Telecommunication System and toll project entities, as defined by Transportation Code, §372.001, are exempt from the payment of fees, except as provided by §217.124(e) of this title.]~~

~~[(d) Ineligibility to receive personal information. The department may prohibit a person, business, or Texas governmental entity from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (c) of this section.]~~

~~(e) The requirements of this section do not apply to discovery, subpoena, or other means of legal compulsion for the disclosure of personal information.~~

~~[(e) Initial deposits and minimum balances. Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.]~~

~~(f) A requestor will receive requested individual records in accordance with Title 18 U.S.C. §2721 et seq.; Transportation Code Chapter 730; Government Code §552.130; and this subchapter.~~

§217.1231. Access to In-Bulk Records.

(a) A requestor seeking access to the department's motor vehicle records in bulk must execute a contract with the department in accordance with this section.

(b) A requestor must provide the department the following information, sufficient for the department, to enter into an in-bulk contract:

(1) the name and address of the person or agency of this state contracting with the department;

(2) the specified purpose of the agreement, including the requestor's permitted use under Transportation Code §730.007;

(3) proof of the requestor's identity, in accordance with subsections (b) and (c) of this section;

(4) the signature of the requestor or an authorized official of the requestor;

(5) a statement that the use of motor vehicle records obtained by virtue of an in-bulk contract is conditional upon its being used

(A) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code Chapter 730; and

(B) only for the purposes defined in the agreement; and

(6) any documentation required under §217.125 of this title (relating to Additional Documentation Related to Permitted Uses) and proof of compliance Transportation Code §730.014(c).

(c) Unless the requestor is exempt from the payment of fees, an in-bulk contract must contain an adjustable account, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records). Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.

(d) An agency of this state may attach to a contract with the department to receive motor vehicle records in bulk a statement citing the agency's authority to obtain social security number information, if applicable.

(e) If the department determines that a person or agency of this state has violated a term of an in-bulk contract with the department, the department will cease disclosing personal information to that person or agency of this state.

(f) If an authorized recipient is convicted of an offense under Transportation Code Chapter 730 or is found to have violated Government Code Chapter 552 or a rule under this chapter, then any contract under this section is terminated as of the date of the court's final determination.

§217.1232. Annual Report.

(a) An authorized recipient under an in-bulk contract with the department must electronically submit the annual report on a form prescribed by the department on or before October 1 of each year for the 12-month period beginning September of the preceding year.

(b) An authorized recipient under an in-bulk contract with the department must send in the annual report,

(1) the name of the person to whom the authorized recipient redisclosed personal information, to include both the individual as well as the organization or entity with which the individual is associated, when known;

(2) the person's permitted use under Transportation Code Chapter 730 for the redisclosed records; and

(3) the quantity of individual records redisclosed to the person under each permitted use.

(a) An authorized recipient under an in-bulk contract with the department must sign an affidavit certifying the annual report. If the requestor is an organization or entity, then the affidavit must be executed by an officer or director.

(b) An authorized recipient under an in-bulk contract with the department may request an extension for filing the annual report for no more than 60 days upon proof of an event that is beyond the control of the authorized recipient and that prevents the timely filing of the annual report. A request for extension must be received by the department on or before September 1 of the year the annual report is to be filed.

(c) If an authorized recipient under an in-bulk contract with the department fails to timely file the annual report or request an extension under subsection (d), the department may cease providing motor

vehicle records until the annual report is filed. If an authorized recipient fails to file an annual report by December 15 of the filing year, then the contract for bulk records will be terminated.

(d) If a person cancels or the department terminates an in-bulk contract with the department, the person must submit a final report containing all the information required under subsection (b) of this section to inform the department of all personal information redisclosed since the person's last annual report. The person must submit this report by the 90th day after the date of the cancellation or termination of the in-bulk contract.

§217.125. Additional Documentation Related to ~~Certain~~ Permitted Uses.

(a) The department may require a requestor to provide reasonable assurance as to the identity of the requestor and that the use of motor vehicle records is only as authorized under Transportation Code [;] §730.012(a). Where applicable, each requestor submitting a request for motor vehicle records shall provide documentation satisfactory to the department that they are authorized to request the information on behalf of the organization, entity, [business] or government agency [entity] authorized to receive the information.

(b) Requestors seeking personal information under the permitted uses listed in this subsection must provide reasonable assurances as follows [Disclosure under the following permitted uses requires additional documentation submitted to the department]:

(1) A request under Transportation Code [;] §730.007(a)(2)(C) must submit [requires submitting] the personal information the business is attempting to verify against the department's motor vehicle records and documentation sufficient to prove the requestor is a business licensed by, registered with, or subject to regulatory oversight by a government agency.

(2) A request under Transportation Code [7] §730.007(a)(2)(D) must submit [~~requires submitting~~] proof of a legal proceeding, or if no proceeding has been initiated, proof the requestor is in anticipation of litigation [~~proceeding~~].

(3) A request under Transportation Code [7] §730.007(a)(2)(E) must submit [~~requires submitting~~] documentation sufficient to prove the requestor is employed in a researching occupation.

(4) A request under Transportation Code [7] §730.007(a)(2)(F) must submit [~~requires submitting~~] a license number provided by the Texas Department of Insurance, a license number the insurance support organization is working under, or proof of self-insurance.

(5) A request under Transportation Code [7] §730.007(a)(2)(G) must submit [~~requires submitting~~] a license number provided by the Texas Department of Licensing and Regulation.

(6) A request under Transportation Code [7] §730.007(a)(2)(H) must submit [~~requires submitting~~] a license number provided by the Texas Department of Public Safety.

(7) A request under Transportation Code [7] §730.007(a)(2)(I) must submit [~~requires submitting~~] a copy of the commercial driver's license.

(8) A request under Transportation Code [7] §730.007(a)(2)(J) must submit [~~requires submitting~~] documentation to relate the requested personal information with the operation of a [private] toll transportation facility or another type of transportation project as described by Transportation Code §370.003.

(9) A request under Transportation Code [7] §730.007(a)(2)(K) must submit [~~requires a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), to submit~~] documentation on official letterhead indicating a permitted use for personal information, as defined by that Act.

(10) A request under Transportation Code §730.007(a)(2)(L) must submit a license number of a manufacturer, dealership, or distributor issued by the department.

(11) A request under Transportation Code §730.007(a)(2)(M) must submit a license or registration number of a salvage vehicle dealer, an independent motor vehicle dealer, a wholesale motor vehicle dealer, or a used automotive parts recycler, issued by the department; or other proof that the requestor is subject to regulatory oversight by an entity listed in Transportation Code §730.007(a)(2)(M)(iv).

(c) Regarding §217.125(b)(4-6, 10, and 11), the department may accept out-of-state licenses as documentation of a permitted use. Under this subsection, the department will not provide access to motor vehicle records in bulk [~~limit access to a record by record basis~~].

(d) The department may require a requestor to provide additional information to clarify the requestor's use of the personal information if the reasonable assurances provided with the request are not satisfactory to the department.

(e) The department will not disclose any personal information for which the requestor fails to provide sufficient assurances that the use of the personal information will be only as authorized under Transportation Code Chapter 730.

§217.126. Limitations on ~~Resale and~~ Redisclosure.

(a) Authorized recipients may only [~~resell or~~] redisclose personal information to other authorized recipients and not in the identical or substantially identical format as provided by the department.

(b) Authorized recipients may not [~~resell or~~] redisclose personal information from the department's [~~the entire~~] motor vehicle records [~~database~~] in [~~its complete~~] bulk [~~format~~].

(c) Any authorized recipient [~~reselling or~~] redisclosing personal information must inform the person to whom they are [~~reselling or~~] redisclosing of their obligations under Transportation Code [,] Chapter 730 and this subchapter.

(d) ~~An~~ ~~[Any]~~ authorized recipient is responsible for any misuse of personal information by any person to whom they redisclosed the information ~~[receiving their version of the information]~~, regardless of whether the authorized recipient approved or was aware of subsequent transfers of the information.

(e) An authorized recipient who resold personal information prior to June 18, 2021, is subject to the limitations in this section for that resale.

§217.127. Records Maintained by Recipients Who ~~[Resell or]~~ Rediscover Personal Information.

(a) Authorized recipients who ~~[resell or]~~ redisclose personal information from the department's motor vehicle records are required to maintain records of that transaction.

(b) Records must be maintained for not less than five years and must include:

(1) the name and contact information of the person to whom the authorized recipient ~~[any recipient of resold or]~~ redisclosed personal information contained in the department's motor vehicle records, to include both the individual as well as the organization or entity the individual is associated with, when known;

(2) the person's permitted use under Transportation Code Chapter 730 for ~~[which]~~ the redisclosed records ~~[were released]~~, and any ~~[or]~~ documentation the authorized recipient received related to the person's permitted use ~~[in accordance with §217.125(b) of this title (relating to Additional Documentation Related to Certain Permitted Uses)];~~

(3) the quantity of individual records redisclosed ~~[sold or disclosed]~~ to the ~~[each subsequent]~~ person under each permitted use;

(4) a statement ~~[by the authorized recipient]~~ specifying what data was ~~[resold or]~~ redisclosed and in what format; ~~[and]~~

(5) ~~[any other]~~ documentation of any [the] agreement between the authorized recipient and the person receiving [to resell or redisclose] personal information contained in motor vehicle records~~[-]; and~~

(6) the dates on which the authorized recipient redisclosed personal information to the person.

(c) An authorized recipient who resold personal information prior to June 18, 2021, must maintain records of those transactions for five years, including all items listed in subsections (b)(1) – (5) of this section.

§217.128. Department Review of Recipient's Records of ~~[Resale or]~~ Redisclosure.

(a) The department ~~may [has the authority to]~~ request and review records maintained under §217.127 of this title (relating to Records Maintained by Recipients Who Redisclose Personal Information) ~~[kept by all authorized recipients who resell or redisclose personal information].~~

(b) The department will request records from authorized recipients in writing. ~~[This request will be made in writing.]~~

(c) The authorized recipient [requested records] must provide [be provided] all requested records to the department [within 30 days of the request] in accordance with Transportation Code §730.007(g).

(d) Failure to fully respond to the department's request may result in termination of access to motor vehicle records under Transportation Code §730.007.

~~[(e) Upon receipt of the requested records, the department will evaluate the records for compliance with the service agreement, applicable statutes, and rules.~~

~~(f) If it is determined that an authorized recipient is not in compliance with the service agreement, applicable statutes, and rules, the service agreement may be terminated.]~~

§217.129. Ineligibility to Receive Personal Information Contained in Motor Vehicle Records.

(a) The department may deny a request for or cease disclosing personal information contained in the department's ~~[requestor's access to]~~ motor vehicle records if it determines withholding the information benefits the public's interest more than releasing the information.

(b) If the department determines an authorized recipient ~~[of motor vehicle records]~~ has violated a clause or term of a contract with the department to access motor vehicle records ~~[the service agreement]~~, and that contract ~~[service agreement]~~ has been terminated, that authorized recipient cannot enter into a subsequent contract with the department to access motor vehicle records ~~[service agreement]~~ unless approved to do so under §217.130 of this title (relating to Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated).

(c) Termination of a contract with the department to access motor vehicle records ~~[the service agreement]~~ caused by any member of a business, partnership, or entity shall be effective on the whole organization. Subsequent businesses formed by any member, officer, partner, or affiliate of an entity whose contract with the department to access motor vehicle records ~~[service agreement]~~ has been terminated will also be ineligible to receive records, unless approved under §217.130 of this title (relating to Approval for Persons Whose Access to Personal Information Contained in Motor Vehicle Records has Previously Been Terminated).

§217.130. Approval for Persons Whose Access to Personal Information Contained in Motor Vehicle Records Has Previously Been Terminated.

(a) A requestor whose contract with the department to access motor vehicle records ~~[service agreement]~~ was previously terminated by the department for reasons other than the failure to maintain minimum balance requirements in an adjustable account, but who is not subject to Transportation Code ~~[7]~~ §730.016, shall submit a written request for reapproval on the form required by the department.

(b) In addition to the requirements of §§217.123 and 217.131 of this title (relating to Access to Individual ~~[Motor Vehicle]~~ Records and to Access to In-Bulk Records), the request must contain:

(1) any documents indicating remedial efforts the requestor has undertaken to prevent the unlawful disclosure of personal information from the department's motor vehicle records,

(2) any documents indicating agreements between the requestor and any person to whom the requestor has reason to believe it will redisclose personal information from the department's ~~[third parties receiving resold or redisclosed]~~ motor vehicle records, and

(3) a statement that the requestor will notify the department before ~~reselling or~~ redisclosing any motor vehicle records for the time period prescribed by the department, including all of the information required under §217.127(b) of this title (relating to Records Maintained by Recipients Who ~~Resell or~~ Redisclose Personal Information). The notification must include the name, address, and contact information of the third party requesting resold or redisclosed motor vehicle records, and must include the form(s) used to verify the third party's lawful purpose in obtaining motor vehicle records.

(c) Failure to comply with any of the terms of this section or a re-offense of a contract with the department to access motor vehicle records ~~[the service agreement]~~ will result in the termination of the contract ~~[service agreement]~~ and the permanent inability to receive motor vehicle records.

§217.131 Deletion of Information.

(a) A requestor who has become aware that they are not an authorized recipient under Transportation Code §730.0121 shall, not later than 90 days after the date the requestor becomes aware that the requestor is not an authorized recipient, delete from the requestor's records any personal information received from the department that the requestor is not permitted to receive and use under Transportation Code Chapter 730.

(b) A requestor becomes aware that the requestor is not an authorized recipient when the department sends written notice that the requestor is not an authorized recipient to the address provided under Transportation Code §730.007.

(c) In the event a requestor becomes aware that the requestor is not an authorized recipient without notification from the department, the requestor shall promptly notify the department that the requestor is not an authorized recipient and provide the date they became aware.

(d) A requestor required to delete information under Transportation Code §§ 730.0121 and 730.016 must notify the department when all the department's personal information has been deleted.