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Utah State Records Committee
Attn: Janell E. Tuttle, Executive Secretary (janelltuttle@utah.gov)
346 South Rio Grande
Salt Lake City, Utah 84101

Re: **Notice of Appeal of Denial (Application for Motor Vehicle Information Account)**
Petitioner: Diamond Parking Services, LLC

Statement of Facts, Reasons and Legal Authority

I. Background

Diamond Parking Services, LLC (“Diamond Parking”) manages private toll transportation facilities. Diamond Parking has long had access to and used the motor vehicle records of the Utah Division of Motor Vehicles (“Division”). Diamond Parking has used those records to look up (based on license plate number) the owner of a vehicle when there is an issue with a vehicle parked at one of its facilities (abandonment, maintenance, etc.), or to notify an owner of an unpaid parking notice. In 1999, as Diamond Parking started using that information on a more regular basis, it applied for and was granted a Utah Interactive Network Registration Agreement Account (account #1697), which allowed it to access those records directly. Diamond Parking set up that account and accessed that information through a wholly-owned subsidiary, Drico Recovery Services. Subsequently, for entirely unrelated business organization reasons, Diamond Parking contemplated dissolving Drico Recovery Services and instead just performing those same tasks in-house. Accordingly, to better reflect its internal organizational changes and to update its account to be in the name of “Diamond Parking Service, LLC,” on May 12, 2015, Diamond Parking submitted a new Application to Request a Motor Vehicle Account (“New Application”). The transitioning of those tasks from its wholly-owned subsidiary to its in-house Parking Services Division is the only reason Diamond Parking submitted the New Application.

On May 28, 2015, the Division issued a letter denying Diamond Parking’s New Application. As the basis for its denial, the Division asserted that the relevant “statute states that for some specified reasons information contained in motor vehicle records shall be disclosed, yet

for other specified reasons, may be disclosed. The reasons that fall under the may be disclosed category allow the State a level discretion in the disclosure of its motor vehicle records.” On June 26, 2015, Diamond Parking filed a Notice of Appeal to the chief administrative officer of the Utah State Tax Commission (Barry Conover, Executive Director). On July 1, 2015, the Executive Director denied that Appeal. The given basis for the Executive Director’s denial was the erroneous assertion that “Utah Code §41-1a-116(4)(b) does not allow for this information to be used for the collection of a debt.” As permitted by the Utah Governmental Records Access and Management Act, §63G-2-402(1)(a), Diamond Parking hereby appeals that denial to the Records Committee.

II. Legal Authority in Support

Diamond Parking is lawfully entitled to access the Division’s motor vehicle records. Even if it were not so entitled, the Executive Director can, upon weighing the various interests and public policies, approve the requested access, as the interests favoring access are at least equal to any interests favoring restriction.

A. Lawfully Entitled

The Utah Motor Vehicle Act provides that “[a]ll motor vehicle title and registration records of the division are protected unless the division determines based upon a written request by the subject of the record that the record is public.” Utah Code Ann. §41-1a-116(1)(a). The Act goes on, however, to establish two categories of exceptions, wherein access “is” permitted. The first category of exceptions includes the “provisions of this section,” *i.e.*, paragraphs (3) through (7) enumerating various circumstances where access either is or may be permitted; the second category of exceptions includes access “for all purposes described in the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.” *Id.*, §41-1a-116(1)(b). In contrast to the first category, wherein some of the enumerated exceptions “may” only apply at the discretion of the Division, under the second category the Utah Legislature determined that access “is permitted for all purposes described in the federal” Driver’s Privacy Protection Act. *Id.* One of the expressly enumerated purposes described in the federal Act is “[f]or use in connection with the operation of private toll transportation facilities.” 18 U.S.C. §2721(b)(10). Accordingly, under this second category of exceptions, access “is” permitted to Diamond Parking for its purpose of operating private toll transportation facilities.

As its basis for denying Petitioner’s Appeal, the Executive Director erroneously asserts that “Utah Code §41-1a-116(4)(b) does not allow for this information to be used for the collection of debt.” Although Diamond Parking disputes the characterization of its use as being for the collection of debt, even if it were, the denial misstates and misapplies subsection 116 of the Motor Vehicles Act. As addressed above, subsection 116 sets forth the general rule that “motor vehicle title and registration records are protected,” but then establishes two categories of exceptions wherein access “is” or “may” be permitted. The category of exceptions where access “is” permitted includes access for a “private investigator ... with a legitimate business need,” but the provision states that a legitimate business need for such private investigators “does not include the collection of a debt.” §41-1a-116(4)(b). Diamond Parking’s application and subsequent Appeal were not based on this “private investigator” exception (for which a debt collection purpose would be disqualifying), but rather on the federal Driver’s Privacy Protection

Act exception (for which a debt collection would be irrelevant). §41-1a-116(1)(b). As noted above, separate and apart from whether an applicant may qualify for access as a private inspector, the Utah Legislature determined that access “is permitted for all purposes described in the federal” Driver’s Privacy Protection Act. *Id.* One of the expressly enumerated purposes described in the federal Act is “[f]or use in connection with the operation of private toll transportation facilities.” 18 U.S.C. §2721(b)(10). Accordingly, under the plain language of the Utah Motor Vehicle Act, access “is” permitted to Diamond Parking for its purpose of operating private toll transportation facilities.

B. Weighing of the Interest:

Even if Diamond Parking were not entitled as a matter of law to access the subject motor vehicle records, the Utah Governmental Records Access and Management Act provides that “the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as ... protected if the public interests favoring access are greater than or equal to the interest favoring restriction of access.” Utah Code Ann. §63G-2-403(11)(b).

Diamond Parking recognizes the intent of the Division’s policy, and that the Division may have the discretion to deny access in certain circumstances, including in certain unlawful debt collection practices. Diamond Parking’s intent of access, however, is not for any such unlawful practice, but only to look up the owner of a vehicle when there is an issue (abandonment, maintenance, etc.) with a parked vehicle, or to notify an owner of an unpaid parking notice. In that regard, Diamond Parking reiterated in its June 18 letter to the Division the same warranties and representations it made in the Application (Term #3. Limited Use of Records), that the records “will only be accessed for the purpose marked on this application and that such records will not be used, disclosed or disseminated for any other purpose” The interests favoring access (Diamond Parking’s long-standing use, and its access to and reliance on those records which is so important to the operation of its private toll transportation facilities) are greater than or equal to the interests favoring restriction of access (preventing unlawful debt collection practices).¹

III. Relief Sought

In summary, given Diamond Parking’s long-standing use of and reliance on those motor vehicle records, which has been so important to the operation of its private toll transportation facilities, in light of Diamond Parking’s very limited and guarded use of those records, and the

¹ In recognizing there may be a variety of unlawful predatory debt collection practices where the Division feels it should restrict access, it would be in the best interest of the public for the Records Committee to approve the Application through a “weighing of interests” rather than forcing the issue as to whether Diamond Parking and similarly situated operators of private toll transportation facilities are categorically entitled to access as a matter of law. Similarly, it would be in the best interest of the public for the Records Committee to approve the Application through this administrative appeal rather than having the District Court categorically resolve the legal issue as to whether the Division lacks discretion in this context.

unequivocal language in the federal Driver's Privacy Protection Act pertaining to access for the operation of such private toll transportation facilities, Diamond Parking respectfully requests that the Records Committee approve the New Application.

Respectfully submitted,

/s/

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Petitioner

Diamond Parking Services, LLC
Tammy Halvorson

cc: Utah State Tax Commission
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Attachment