

Eleventh Circuit Rules Best Buy's ID Swipe Policy Does Not Violate Federal Privacy Law

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On Tuesday, the Eleventh Circuit ruled that Best Buy's policy of swiping drivers' licenses when customers return purchases does not violate the federal Drivers' Privacy Protection Act of 1994 ("DPPA"). In a *per curiam* opinion, the court affirmed the U.S. District Court for the Southern District of Florida's dismissal of the putative nationwide class action and determination that the DPPA does not apply to information supplied by the customer.

The lawsuit arose in October 2011 when the plaintiff attempted to return a computer mouse at a Best Buy store in Florida. During that transaction, the store cashier requested the plaintiff's driver's license to complete the return and, when the plaintiff supplied it, scanned the license's magnetic strip. The plaintiff demanded that Best Buy delete the magnetic strip information, but Best Buy stated it could not. The plaintiff then filed a complaint against the company, alleging that Best Buy's policy violated the DPPA, which prohibits knowingly obtaining, disclosing, or using personal information, from a motor vehicle record, for an unpermitted purpose.

The Eleventh Circuit agreed with the District Court that the DPPA was intended to prohibit the disclosure of personal information originating from the state department of motor vehicle records only and not from the driver's license holder. Thus, the court concluded, the plaintiff had failed to state a claim for which relief could be granted. The court explained that the DPPA was enacted to prevent state employee access to and disclosure of personal records and regulates disclosure of information by the state and supplied by the state only.

The court also acknowledged in a footnote that the return policy on the back of the Best Buy receipt that the plaintiff received with his purchase notified him of the company's policy of swiping drivers' licenses for returns. It stated:

Best Buy tracks exchanges and returns on an individual level. When you exchange or return an item, we require a valid form of ID.... Some of the information from your ID may be stored in a secure, encrypted database of customer activity that Best Buy and its affiliates use to track exchanges and returns. Valid forms of ID accepted are: U.S., Canadian, or Mexican Driver's License, U.S. State ID, Canadian Province ID, U.S. Military ID or Passport.

Accordingly, the consumer was advised of Best Buy's policy to required IDs for returns and opted to proceed anyway.