

That Data is Mine - The Driver Privacy Act of 2015

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It seems like every summer with the new driving season we see a rash of immediate response calls. Those calls have evolved over the years with technological changes. With the increase in calls and the new limits on investigations, we thought it important to review the most sweeping changes courtesy of last year's Fixing American's Surface Transportation (FAST) Act.

Seventeen states have enacted legislation limiting access to a vehicle's event data recorder (EDR), also known as the "black box," under the guise of data privacy protection. The data contained on EDRs can provide insight into a driver's behavior in the moments leading up to a collision. Where previously there have been no national standards for ownership, use, or privacy of EDR data, this initiative has now reached the federal level. Late last year, The Driver Privacy Act of 2015 (Act) was signed into law as part of the FAST Act (H.R. 22).

Similar to its state predecessors, the Act curtails the kind of EDR data and who can retrieve it following a collision. Although the Act allows an authorized party to access time-series data for the period immediately prior to or during a crash event, access to audio and video data is prohibited. Further, the Act provides that the owner or lessee of a motor vehicle *owns* the data contained within the vehicle's EDR. In many circumstances we have been confronted with the engine or vehicle manufacturer that claimed to own the data and served as a difficult and reluctant participant during investigations and discovery. In turn, that data can only be retrieved by the owner or lessee unless one of the following scenarios is satisfied:

- A court order is obtained;
- the owner or lessee gives permission;
- access is needed for a federal investigation or inspection, provided the vehicle owner's and vehicle's identifying information is not disclosed;
- access use needed for emergency medical response to a motor vehicle collision; and
- authorized traffic safety research, provided the vehicle owner's and vehicle's identifying information is not disclosed.

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The Act has several implications. First, if a vehicle owner denies access to the EDR, prompt accident investigation may temporarily grind to a halt. Few motor carriers or companies want to run to court, initiate the litigation process, and acquire a court order to inspect a potential claimant's vehicle.

Second, where a company-owned vehicle or an owner-operator's vehicle is involved, the issue of obtaining permission becomes more complicated. For a company-owned vehicle, the company, not the employee, must consent to the retrieval of any EDR data. In the case of an owner-operator or employee-owned vehicle used for company business, the driver is the owner of the vehicle who retains access rights (and is often reluctant to share).

With the implementation of the Act, accident investigations across the country may lack the simplicity of days past. By preparing independent contractors and themselves for the handling of EDR data after employment-related accidents, companies will be better equipped to manage incidents sooner than later.

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