

To: Martin Matthews	MEMORANDUM
From: [REDACTED]	
Date: 29 March 2012	
Through: David Bowden	

Subject: Section 241, Land Transport Act 1998: Authorised Access to Certain Names and Addresses held on Motor Vehicle Register (Thompson & Clark Investigations Limited)

Background

1. Section 241 of the Land Transport Act 1998 (the Act) empowers you to authorise any applicant to have access to the names and addresses of persons currently registered in respect of a motor vehicle, with the exception of those who have instructed the Registrar of Motor Vehicles to withhold their details ("opted out").
2. Thompson & Clark Investigations Limited (TCIL) is a licensed private investigator company. TCIL has applied for access to names and addresses held on the Motor Vehicle Register (MVR) for the following purposes ("requested purposes"):
 - Identifying owners of vehicles observed during investigations into suspected criminal activities
 - Managing security risk for an SOE at a large industrial site on the West Coast, by conducting daily site checks and identifying persons associated with suspicious vehicles.

Proposal

3. It is proposed that you approve, subject to the conditions below, the application from TCIL to have access to names and addresses of persons currently registered in respect of a vehicle for the following purposes ("specified purposes"):
 - Preparing evidence related to criminal offences
 - The detection and investigation of suspected fraud
 - Enforcing court orders and judgments
 - When acting as a contracted agent on behalf of government agencies with law enforcement functions, to assist in carrying out those functions
 - To identify registered persons of motor vehicles within Solid Energy New Zealand Limited's West Coast industrial site that Thompson & Clark Investigations Limited provide security for, where the vehicles are unattended or have not been able to be stopped or, where vehicles are stopped, to confirm that details supplied are accurate.
4. It is proposed that TCIL be granted access to the MVR for the specified purposes on the condition that name and address details are only accessed by Nick Thompson and Gavin Clark on behalf of TCIL.

5. It is proposed that access be approved for a period commencing from the date TCIL receives the final decision on its application and expiring at midnight on 28 February 2013 (just under 1 year). Access to the MVR will be reassessed after the term lapses. This is to allow the authorisation to be monitored and to assess the potential risks/consequences for future applications of a similar nature.

Views of Chief Ombudsman, Privacy Commissioner and Commissioner of Police

6. Section 241(1) requires that prior to making a decision on an application you must consult the Chief Ombudsman, Privacy Commissioner and Commissioner of Police (the advising agencies).
7. The Chief Ombudsman advised that there is a public interest in granting access for the requested purpose of detecting and investigating offences and suspected fraud. She noted if, after considering the Privacy Commissioner's view, the Ministry decided that this interest outweighs individual privacy interests, then careful consideration would need to be given to the appropriate conditions. She advised that, in all other respects, it does not seem that TCIL has made a persuasive case for access.
8. The Privacy Commissioner advised that TCIL should not be allowed to access the MVR for the requested purposes.
9. The Police provided, on behalf of the Commissioner of Police, general comments about the potential for an applicant to misuse information or a third party to obtain information from an applicant who has legitimate access, but raised no specific concerns about this applicant. The Police also noted that, where an applicant is a private investigator, they are concerned that clients are not bound by the same rules as private investigators in relation to use of name and address details.
10. Since the advising agencies' comments were sought on this application, we have gone back to advising agencies and requested permission to apply their comments on these earlier private investigator applications to similar future applications.
11. The Chief Ombudsman advised that the Ministry's proposal seemed reasonable, provided that we are satisfied in each case that the applicant in question meets good character requirements.
12. The Police advised, on behalf of the Commissioner of Police, that they agree with the proposal on the basis that it is appropriate that a consistent approach is taken to applications from similar organisations for access to information for the same purpose. The Police noted that the applications themselves will still need to be assessed on a case by case basis.
13. The Privacy Commissioner advised that access to the MVR should not be granted and requested a meeting with you. After several discussions we have reached an understanding with the Privacy Commissioner. She believes that, although the process we have introduced for access by private investigators creates some important safeguards against misuse of information, she still has concerns about whether the controls will prove to be adequate in practice.

Ministry view

14. A panel of Ministry and New Zealand Transport Agency (NZTA) staff (the panel) considered the application made by TCIL and recommends access should be granted for the specified purposes.
15. A draft decision letter on the application was sent to the applicant on 13 May 2011 and the applicant was given an opportunity to comment on the draft decision and conditions proposed by the panel.
16. The draft decision authorised TCIL to have access to the MVR for the following purposes:
 - Law enforcement including preparing evidence related to criminal offences, and the detection and investigation of suspected fraud
 - To identify registered persons of motor vehicles within the West Coast industrial site of the SOE Thompson & Clark Investigations Limited provide security for, where the vehicles are unattended or have not been able to be stopped or, where vehicles are stopped, to confirm that details supplied are accurate.
17. Subsequently, TCIL requested that access be granted for two further purposes, these are:
 - (a) The ability for TCIL to identify persons that are involved in activity that is likely to be subject to civil proceedings
 - (b) The ability to assess vehicles and their occupants in certain circumstances in the likelihood that they would pose an immediate threat to TCIL clients.
18. TCIL provided the following examples to support its case for gaining access to the MVR for purpose (a).
 - [REDACTED]
 - The outcome of this case was that it was a civil matter and civil proceedings were likely to result. TCIL could not have progressed this investigation further without access to the MVR. TCIL are involved in similar cases which involve corporations that may litigate in a civil forum.
19. TCIL provided the following case studies to explain why it needs access to personal details held on the MVR for purpose (b).
 - In addition to the West Coast site, Solid Energy have other mines nationally which may be at risk from activists. This activity usually involves breaches of the Crimes Act, Trespass Act, Bio Security Act, and Conservation Act. TCIL have seen occasions during certain mine campaigns where directors have been harassed at home.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

20. After reviewing the case studies provided by TCIL, the panel is concerned that requested purpose (b) is too wide, as the underlying principle is that access is restricted. If access was granted for this purpose, there would be no limit to the situations in which TCIL could access the MVR.
21. The panel recommended granting access in relation to the West Coast industrial site of the SOE that TCIL provide security for because of the nature of that particular site and the risks involved. It is similar to other applications regarding the management and security of [REDACTED]. Access has only been granted in these situations for limited purposes e.g. where vehicles are unattended or have not been able to be stopped or, where vehicles have been stopped, to confirm that details supplied are accurate. From the additional information TCIL provided, it seemed that the only situations that would be of a similar nature [REDACTED] is the situations involving other industrial sites which TCIL provide security for on behalf of Solid Energy New Zealand. The panel requested further information about these sites.
22. In regards to purpose (a), the panel noted that Principle 11(e)(iv) of the Privacy Act 1993 applies. This Principle states “*an agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds...that non-compliance is necessary...for the conduct of proceedings before any court or tribunal...*”
23. When applying for information on a case by case basis under section 236 of the Act, section 237 states that information may be released if an enactment permits disclosure of the information. The Privacy Act 1993 is an enactment. Therefore, section 237 allows name and address details held on the MVR to be released for the purpose of conducting civil proceedings. However, Principle 11(e)(iv) states that non-compliance must be necessary. Because there is a range of other ways of getting this information it would not be released under a section 241 authorisation as there is no way of telling if it meets the necessary threshold. Applying for this on a case by case basis under section 236 of the Act would allow this to be assessed.

24. On 9 February 2012, we wrote to TCIL advising it of the panel's reasoning set out above. TCIL were also asked to provide further information about the industrial sites which it provides security for on behalf of Solid Energy New Zealand.
25. We have not received any further information from TCIL. Therefore, the attached letter essentially confirms the draft decision. However, the purpose in the original draft decision of 13 May 2011 has been clarified in response to comments we have received from the Ombudsman regarding private investigators. The Ombudsman was concerned about the potential for the words "law enforcement" to be misinterpreted.
26. After our discussions with the Privacy Commissioner we have also changed condition (g) to include a requirement to supply vehicle registration numbers for each enquiry made in relation to the MVR during the term of the authorisation. With this information we can follow up with the person as to why the private investigator was accessing their details. The prospect of random checks has been noted in the letter attached, and checks will be conducted from time to time to make good on the intent.

Proposed Conditions on Access

27. The following conditions are proposed:
 - (a) The names and addresses are accessed only by Nick Thompson and Gavin Clark on behalf of Thompson & Clark Investigations Limited and solely for Thompson & Clark Investigations Limited's own use;
 - (b) The names and addresses are accessed only for a specified purpose;
 - (c) To access the Motor Vehicle Register, Thompson & Clark Investigations Limited must hold a private investigator licence and Nick Thompson and Gavin Clark must each hold a certificate of approval under the Private Security Personnel and Private Investigators Act 2010;
 - (d) The fees charged for the provision of the names and addresses from the Motor Vehicle Register are duly paid;
 - (e) Any identified instances of unauthorised access are immediately notified to the Secretary for Transport and the Privacy Commissioner;
 - (f) The names and addresses obtained under this authorisation shall not be disclosed to any third party unless such disclosure is necessarily incidental to achieving a specified purpose;
 - (g) Before 28 February 2013, Thompson & Clark Investigations Limited must provide the Secretary for Transport with a report providing details of the purpose, the date, and the vehicle registration number of each enquiry made in relation to the Motor Vehicle Register during the term of the authorisation;
 - (h) Subject to the conditions above, the terms and conditions, if any, imposed by the NZTA for access to Motor Vehicle Register information; and
 - (i) The authorisation is valid for a period commencing on the date that Thompson & Clark Investigations Limited receives the final decision on its application and ending at midnight on 28 February 2013.

Publication in the *Gazette*

28. Section 241(1) requires that authorisations must be notified in the *New Zealand Gazette*. A draft *Gazette* notice is attached for your signature.

Recommendations

It is recommended that you:

- (a) **approve**, subject to conditions, the application from Thompson & Clark Investigations Limited (TCIL) to have access to names and addresses of persons currently registered in respect of a vehicle for the following purposes:
- Preparing evidence related to criminal offences
 - The detection and investigation of suspected fraud
 - Enforcing court orders and judgments
 - When acting as a contracted agent on behalf of government agencies with law enforcement functions, to assist in carrying out those functions
 - To identify registered persons of motor vehicles within Solid Energy New Zealand Limited's West Coast industrial site that Thompson & Clark Investigations Limited provide security for, where the vehicles are unattended or have not been able to be stopped or, where vehicles are stopped, to confirm that details supplied are accurate.

For a period ending on 28 February 2013.

- (b) **sign** the attached notice for publication in the *Gazette*
- (c) **sign** the attached letter to Gavin Clark of TCIL

Regards

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Solicitor
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