

<b>Minutes for:</b>	Meeting of Panel to consider section 241 applications 91- 95
<b>Date of meeting:</b>	Wednesday, 27 April 2011
<b>Panel Attendees:</b>	David Bowden, [REDACTED] (NZTA), [REDACTED] (NZTA)

### **Purpose of meeting**

1. This meeting is to consider s241 applications in conjunction with comments from the advising agencies (Ombudsmen, Privacy Commissioner, and the Police).
2. The following applications were considered at this meeting:
  - [REDACTED]
  - [REDACTED]
  - Application 93 – Thompson & Clark Investigations
  - [REDACTED]
  - [REDACTED]
3. This meeting will enable advice on these applications to be drafted.

### **Minutes/ General discussion**

4. The Minutes of the previous Panel meetings of 30 March 2011 and 8 April 2011 were approved.

### **Matters Arising - Private Investigators**

5. David Bowden had previously updated the Panel on progress made with respect to dealing with applications from Private Investigators. The initial view was that Private Investigators should not be granted access, however further submission and supplementary information provided from applicants who had high professional standing in the sector, required the industry group to be re-assessed.
6. Ministry officers had been working to identify legislation or professional certification which would provide the Panel with a framework and some clear criteria on which to base decisions about S241 authorisations. The Ministry had been hopeful of obtaining a recommendation from the Police of a more personal nature than the standard “police vetting’ mechanism which all registered Private Investigator are subject to as part of the process for registration. This turned out to be problematic.
7. New legislation (Private Security Personnel and Private Investigators Act 2010) is in place and registered Private Investigators are in the process of transitioning from the old legislation to a new licensing framework. David Bowden had spoken to the new Licensing Authority within the Ministry of Justice and received an assurance that the Private Investigator licensing requirements would be tougher under the new regime.
8. The Police often work closely with Private Investigators or support their work in circumstances where the Police don’t have the resources to deal with certain matters. The Panel had previously supported an approach whereby if an individual application was

submitted by a Private Investigator, who held a current license and was actively engaged in transitioning for re-approval then they could be authorised for:

- *Law enforcement including preparing evidence related to criminal offences, and the detection and investigation of suspected fraud*
9. The Panel further agreed that an approval would be for one year with monitoring and an Audit report will be require in relation to every MVR access point. The MoT will write to the Police advising who has been approved.

### **Consideration of Applications**

10. Where the Panel has agreed that access could be granted for the applications below, the conditions as outlined by the Ombudsmen apply.

### **Application [REDACTED]**

11. The requested uses, as outlined by the applicant, were discussed.
12. [REDACTED] operates a registered Private Investigator service under the Private Security Personnel and Private Investigators (PSPPI) Act 2010.
13. [REDACTED] states that it *“has signed contracts to act as agents for and carry out duties of several government agencies, most insurers and large corporate entities such as [REDACTED] for internal theft issues.”*
14. [REDACTED] intends to use personal information on the register:
- *“For law enforcement and in the course of legitimate investigations.”*
15. The Ombudsman noted that [REDACTED] has elaborated on its *“law enforcement”* functions in the following terms:
- *“[REDACTED] is not a law enforcement agency, however to reiterate an earlier point raised, [REDACTED] is an appointed and contracted agent for several Government and Law Enforcement agencies in New Zealand and assigned to uphold legislation accordingly.*
  - *[REDACTED] has a significant history of successful and conclusive partnership with [REDACTED]*
  - *It is proposed that it is in the public interest for [REDACTED] to be granted access to MVR to conduct its law enforcement activities and duties. Whilst it may be such that not every investigation in which [REDACTED] Investigations is involved is actually or potentially related to law enforcement, however a large proportion of [REDACTED] work is directly law enforcement or legislation support related.”*
16. The Panel approved [REDACTED] on the basis of the approach outlined above, ie:
- *Law enforcement including preparing evidence related to criminal offences, and the detection and investigation of suspected fraud*
  - *Approval would be for one year with monitoring*

- *An Audit report will be required in relation to every MVR access point.*

17. The MoT will write to the Police advising that [REDACTED] who have been approved.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

• [REDACTED]

[REDACTED]

• [REDACTED]



- *Granting access for crime prevention purposes could be seen as a breach of trust by members of the public. Taking TCIL's case study as an example, it would be highly undesirable if access was seen as a means of suppressing legitimate protest (noting that concerns have been raised in the past about TCIL's methods of monitoring environmental protest groups). Access could also be seen as infringing the privacy rights of other legitimate users. TCIL notes that "there is also lawful activity such as hunting, 4x4 driving, tramping and other activity in neighbouring blocks which use the same access road". (Point 18)*
- *You may consider that there is a basis for granting authorisation access in respect of specific clients and premises, once sufficient evidence has been advanced. However, an unqualified authorisation for crime prevention purposes more generally, does not seem to be justified.(Point 21)*

35. The Panel agreed to access on the same basis as [REDACTED] (above), but limited to the points made in Point 19 of the Ombudsman's comments: "*It seems to me that in order for authorised access to be justified there must be (a) a credible risk of criminal offending, and (b) limited recourse to the Police as a means of managing that risk. However it may be difficult to enforce such conditions.*"

[REDACTED]

40. [REDACTED]



50. The Panel agreed that for fraud and building a criminal case, then [REDACTED] could be approved in principle for the same purposes and conditions as [REDACTED] above, however they felt that other applications had provided more useful detail.
51. The Panel were not fundamentally opposed to the application but needed more detail such (a) case studies showing how the information is used in context, and (b) What it is not intended for.

**ACTION:** Ministry to request more information from [REDACTED]

### **Other Business**

52. David Bowden tabled a copy of a memo from [REDACTED] to [REDACTED] dated 26 April 2011- *MVR: Access to name and address of historic registered persons.*
53. Following a recent discussion between NZTA and the Financial Services Federation it became apparent that their members frequently access historic registered person information. Their reasons for doing so are:
  - *investigate claims of fraud where a third party states that 'ownership' of the vehicle was changed without their knowledge*
  - *establish patterns where a vehicle has repeatedly changed 'ownership' between 2 parties to obtain finance fraudulently, and*
  - *confirm whether a security vehicle has been on-sold to a 3<sup>rd</sup> party.*
54. While these reasons suggest that financiers may still rely on the MVR for an indication of legal ownership, the use of historic registered person information does, on the face of it, appear to be a useful tool for detecting fraud. As such there would seem to be a public interest in favour of disclosing an individual's name and address for these reasons. Assuming this to be the case and information is disclosed then it could be expected that many requests for the same reasons (whether or not from the same applicant) would follow.
55. A finance company contacted NZTA and advised that they currently run 35-40 checks on historic registered persons on a daily basis. Even if some of these were considered unnecessary under the new regime and only half were requested this would still be 15-20 applications daily from one applicant only. The Financial Services Federation has around 42 members. 42 multiplied by 20 is 840 applications per day. This is from one industry body only. Potentially there could be thousands of applications every day. Applications of this volume would affect the NZTA's ability to service these in a timely and acceptable manner and would likely draw criticism of both the new regime and the NZTA.
56. [REDACTED] has suggested that it seems practical therefore to allow the disclosure of historic registered person information for a set of core purposes to specified applicant types through the Motochek system without the need for each and every application to be assessed by an NZTA staff member. This would be similar in concept to the class authorisation issued to Motor Vehicle Traders and Financial Services Providers which allows access to the name and address of individuals currently registered in respect of a vehicle for a set of core purposes. Details of historic individuals who have opted out would still be withheld and an application made to the NZTA for this information.

57. [REDACTED] notes that there is a risk that this approach might be considered as a slight departure from the principle that each request for historic registered person information is to be considered on a case by case basis, however, the approach should be acceptable on the basis that the weighing of the public interest against the privacy interest is undertaken at the time of first application for that purpose and applicant type.
58. The Panel noted that this scenario is outside s241 and not completely with the intent of the policy changes, but 237(2) excludes – only leaving the OIA option. The NZTA process would have to be shown to weigh up benefits and comply with 237(4).
59. The Panel considered the option that people ask for this information purely because it is or has been available. The Panel questioned what risk this poses if not assessed on a case by case basis – both legally and politically?
60. The Panel suggested that should the proposal be defined, it would be better to state it applied for a core set of circumstances than set parameters, for that person going forward. The information should be released with a rider as to why it was released and only for that purposes.
61. The Ministry is to write to NZTA confirming that they are in agreement with the intent but must apply only to appropriate applicants and for an agreed purpose(s).

**ACTION:** Ministry to respond.