



<b>To:</b> Martin Matthews	MEMORANDUM
<b>From:</b> [REDACTED]	
<b>Date:</b> 18 August 2011	
<b>Through:</b> [REDACTED]	

**Subject:** Approach to Motor Vehicle Register applications for private investigators following meeting with the Privacy Commissioner (27 July 2011)

### Background

1. On 19 July 2011, [REDACTED] provided you with a briefing explaining our reasoning for allowing private investigators access to the Motor Vehicle Register (MVR) to assist you in your discussion on 27 July 2011 with the Privacy Commissioner, Marie Shroff.
2. At this meeting the Privacy Commissioner raised a number of concerns she had with allowing private investigators access to personal information held on the MVR.

### Auditing/Reporting Condition

3. One of the Privacy Commissioner's concerns was that the condition outlining reporting and auditing requirements did not go far enough to address the possibility of abuse, as there was no way to check whether information included in annual reports from private investigators was correct.
4. We have discussed the auditing requirement with the New Zealand Transport Agency (NZTA) and believe that to achieve the level of comfort desired by the Privacy Commissioner a cross check with the private investigator's files would be required. This would be very resource intensive for the NZTA and is not something they are funded for.

### Recommended approach

5. We have taken the Privacy Commissioner's concerns into consideration.
6. However, it is our recommendation that private investigator applicants, who meet the requirements, should be authorised to access the MVR for the following purposes with no additional conditions placed on their section 241 authorisations.
  - 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.
7. Please note the above purposes are new, and have been drafted in response to recent 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.

8. The reasoning for the recommended approach is set out in the following documents:
  - [REDACTED] briefing dated 19 July 2011 (**attached**)
  - Letter addressed to the Privacy Commissioner explaining the Ministry's approach (**attached**)
9. I would like to emphasise that the Police have confirmed that private investigators have an important role to play in the detection and investigation of crime, and would like them to have access to the MVR for this purpose.

### **First Alternative Approach**

10. Should you disagree with the recommended approach, we could require private investigator applicants to employ an external auditor to go through their files to check whether the purpose and date specified in the annual report is correct. This would be at the applicants own cost
11. It is our view that the this condition would address the Privacy Commissioner's concerns, because it would be the only way to check what is provided in the annual reports against what is actually contained in the private investigators' internal files.
12. However, if the this condition was added to section 241 applications it would place a burden on private investigator applicants that has not been applied to other applicants and, given the other measures in place for private investigators, we question whether there is sufficient justification to do so.

### **Second Alternative Approach**

13. Should you disagree with the first alternative approach, we could require private investigator applicants to:
  - specify the client who the MVR was accessed on behalf of each time when fulfilling the reporting condition, the Ministry could then contact the client to verify their instructions and nature of the investigation; or
  - specify the number plate for which personal information was accessed on the MVR, this way we could follow up with the person as to why the private investigator was accessing their details.
14. The above conditions would not provide such a robust check as the first alternative approach. They would serve more as a deterrent, as private investigators would be aware of the possibility that details provided in the report could be followed up with their client or the persons whose details were accessed.
15. This option would place more of an administrative burden on the NZTA, but would be less onerous for private investigator applicants to fulfil.

**Recommendations**

It is recommended that you:

- (a) **agree** with the recommended approach to private investigator applications Yes/No
- (b) **sign** the attached letter to Marie Shroff, Privacy Commissioner Yes/No

Regards

[Redacted]

Solicitor

[Redacted]

[Redacted]