

22 August 2011

The Privacy Commissioner
P O Box 10094
The Terrace
WELLINGTON 6143

Attention: Marie Shroff

Dear Marie

Thank you for meeting with me on 27 July 2011 to discuss your concerns about applications we have received from private investigators.

Further to our meeting, this letter provides you with the Ministry's reasoning for its approach in authorising private investigators' access to names and addresses held on the Motor Vehicle Register (MVR), and aims to deal with the concerns you raised in our discussions.

First, it would be useful to set out the factors that have influenced our thinking towards granting private investigators' access.

New Legislation

Private investigators are bound by legislation which has just been updated to create more robust controls on the industry. The Private Security Personnel and Private Investigators Act 2010 came into force on 1 April 2011 and replaced the Private Investigators and Security Guards Act 1974.

The aim behind this law change was to significantly improve the regulation of the private security industry by:

- preventing certain people from either running businesses or working in various roles in the industry
- ensuring that participants in the industry have at least a minimum level of appropriate training
- requiring industry participants to comply with appropriate rules of conduct

As a condition under a section 241 authorisation a private investigator company must hold a licence under this Act and the individual who will be accessing the MVR on behalf of the company must hold a certificate of approval.

Limited purposes

Access has only been granted for a very limited set of purposes. Initially three applicants were granted access for the following purpose:

- Law enforcement including preparing evidence related to criminal offences, and the detection and investigation of suspected fraud

However, in response to the Ministry's request to apply advising agencies comments to similar future applications, the Ombudsman raised concerns about the potential for the words "law enforcement" to be misinterpreted. Subsequently, we reviewed the specified purpose and amended it to the following (only one applicant has been granted access 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

We are not convinced that allowing private investigators to access the MVR considerably widens the availability of information. It is not open to private investigators to use the information for other purposes, for a fee. Although, we recognise that there would be nothing stopping them doing so, this is possible for every applicant.

I have **attached** case studies provided by private investigator applicants to demonstrate the types of situations where access to the MVR is envisaged by the Ministry.

Length of authorisation

Private investigator applicants have only been granted access for a one year period, where the majority of applicants have been granted access for the maximum five year period allowed under the Land Transport Act 1998. Access has been limited to one year so the Ministry can review the use of the authorisation. We believe that if using the MVR is an important tool for private investigators to do their business, they will ensure they use it properly, otherwise they will lose it.

Auditing conditions

With any authorised user, there is the potential for information from the MVR to be misused. We have taken steps to mitigate this risk by setting up more stringent reporting requirements. Although, they are not as stringent as you would like, they are much stricter than those for most other applicants. The reason for this is the wide variety of

situations in which private investigators could wish to access the information even within the limited scope of the specified purpose.

Facilitate the enforcement of the law

There are strong reasons for allowing private investigators to access the MVR to assist law enforcement agencies with investigations into suspected criminal activity. This purpose is closely aligned with one of the purposes of the register set out in section 235 of the Land Transport Act 1998 which is to facilitate the enforcement of the law.

Section 10 of the Policing Act 2008 acknowledges that the private sector has a role to play in policing. Section 10 states that “it is often appropriate, or necessary, for the Police to perform some of its functions in co-operation with individual citizens, or agencies or bodies other than the Police”.

The Police have confirmed that private investigators have a role to play in the detection and investigation of crime, and that they value this assistance. The inclusion of the New Zealand Institute of Professional Investigators as a member of the Crime Prevention Partnership Forum, which is a crime-prevention partnership between the Police and a number of professional bodies with interests in crime prevention, demonstrates this.

Deterrents

There are strong deterrents in place to prevent the misuse of information by private investigators, including:

- penalties for using personal information in breach of an authorisation granted under section 241 (maximum penalties are \$10,000 for an individual, and \$50,000 for a body corporate)
- the risk that their authorisations will be revoked if they breach the conditions
- the risk that their private investigator licence may be revoked under the Private Security Personnel and Private Investigators Act 2010

Addressing your concerns

One of the concerns you raised 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.

The following are some possible options to mitigate this concern. The Ministry 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
- employ an external auditor to go through their files to check whether the purpose and date specified in the annual report is correct
- specify the number plate for which personal information was accessed on the MVR, this way the Ministry could follow up with the person as to why the private investigator was accessing their details

However, in my view, if any of the above conditions were added to section 241 authorisations 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.

For the reasons set out in this letter, I believe that good grounds exist for allowing private investigators to access the MVR without the need for additional requirements.

Please call me if you would like to discuss further.

Yours sincerely

Martin Matthews
Secretary for Transport