

Thompson & Clark Investigations Limited
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Attention: Gavin Clark <gavin.clark@tcil.co.nz>

Dear Mr Clark

Thank you for your response dated 26 May 2011 in respect of the draft decision on Thompson & Clark Investigations Limited's (TCIL) application for access to the Motor Vehicle Register (MVR).

I apologise for the time it has taken to process your application. As you are aware the Ministry has been in discussions with the Privacy Commissioner about private investigator applications.

A panel of Ministry of Transport (the Ministry) and New Zealand Transport Agency personnel (the panel) have considered your comments. In your letter you sought to extend TCIL's access to the MVR for the following purposes:

- The ability for TCIL to identify persons that are involved in activity that is likely to be subject to civil proceedings (refer to Case 2 in our original application)
- The ability to assess vehicles and their occupants in certain circumstances and the likelihood that they would pose an immediate threat to TCIL clients

You also noted that Provision Security Limited (PSL), TCIL's sister company may require access to the register in the scenarios you provided.

The panel's response to your comments is as follows.

Access for civil proceedings

The draft decision indicated an intention to grant access to TCIL for the following purpose:

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

The Ministry has clarified this purpose in response to comments received from the Ombudsman regarding private investigators. The Ombudsman was concerned about the potential for the words "law enforcement" to be misinterpreted.

The revised specified purposes are:

- 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.

This will allow TCIL to access the MVR in respect of detecting and investigating civil fraud but not in respect of civil proceedings. The panel believe that if it is a civil proceeding then the Privacy Act 1993 Principle 11(e)(iv) applies.

Principle 11 Limits on disclosure of personal information

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,—

(e) that non-compliance is necessary—

(iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);

When applying for information on a case by case basis under section 236 of the Land Transport Act 1998 (the Act), section 237 of the Act 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 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 we would not release it 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 allows this to be assessed.

Access for other TCIL clients

You have requested that the purpose relating to access for a specific SOE you provide security for be extended to all TCIL clients. The panel was concerned that this purpose was too wide. 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 register.

Access was granted 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.

Access for Provision Security Ltd

A decision to authorise TCIL to access the MVR is specific to that company and may not be used for another company. The panel would be happy to consider an application from PSL.

Please let us know as soon as possible if you have any significant issues with the above approach. If we do not hear from you a final decision letter will be sent to you.

Yours sincerely

David Bowden
Legal Manager