

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-029

December 19, 2001

ALBERTA GOVERNMENT SERVICES

Review Number 2208

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Summary: the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Government Services (“Government Services”) for records pertaining to a Third Party’s driving record. Government Services refused access to the records, applying section 16(1) of the Act. At inquiry, Government Services claimed that section 4(1)(h)(ii) of the Act applied to the records, excluding them from the application of the Act. The Acting Commissioner determined that section 4(1)(h)(ii) of the Act applied to the records, excluding them from the application of the Act. He held that he had no jurisdiction over the records. The Applicant could not get access to the records under the Act.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(q), 4(1)(h)(ii), 16(1); *Interpretation Act*, R.S.A. 1980, c. I-7; *Motor Vehicle Administration Act*, R.S.A. 1980, c. M-22, ss. 2(1), 3, 13, 19, 66, 104.

Orders Cited: AB: Orders 97-017, 2001-014.

I. BACKGROUND

[para. 1.] By letter dated March 26, 2001, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Government Services (“Government Services” or the “Public Body”):

We are requesting ... a copy of the driver’s abstract/record of [the Third Party] which is to include a listing of all MVAA and HTA offences. This record should include any and all indications of driving suspensions. We are requesting the complete record of [the Third Party] covering the time period from the creation of the record, and up to and including, the present date.

[para. 2.] The Applicant applied on behalf of his clients, who are defendants in a civil action filed against them by the Third Party.

[para. 3.] A Third Party Notice was issued under section 29 of the Act. On May 18, 2001, Government Services denied access to the record under section 16(1) of the Act.

[para. 4.] By letter dated June 19, 2001, the Applicant asked the Commissioner to review that decision. The request for review went to mediation, which failed.

[para. 5.] On August 15, 2001, a Notice of Inquiry was issued, setting down one issue: does section 16(1) of the Act apply to the record? The Public Body, the Applicant and the Third Party were notified of the inquiry.

[para. 6.] A written inquiry was held in which I considered submissions from the Applicant and Government Services. The Third Party did not participate in the inquiry.

II. THE RECORDS AT ISSUE

[para. 7.] Government Services provided 10 pages of records pertaining to the Third Party's driving record.

III. PRELIMINARY ISSUE

[para. 8.] In its inquiry submission, Government Services applied section 4(1)(h)(ii) of the Act to the records, and argued that I have no jurisdiction over the records. The Applicant denies that section 4(1)(h)(ii) applies to the records.

[para. 9.] If a record falls within section 4(1)(h)(ii), the Act does not apply to that record. Section 4(1)(h)(ii) limits my jurisdiction. Therefore, it must be considered, even if it arises for the first time at the inquiry stage.

IV. ISSUES

[para. 10.] There are two issues in this inquiry:

- A. Does section 4(1)(h)(ii) of the Act apply to the records?
- B. Does section 16(1) of the Act apply to the records?

V. DISCUSSION OF THE ISSUES

ISSUE A. Does section 4(1)(h)(ii) of the Act apply to the records?

1. Summary of the arguments of the parties

[para. 11.] The Applicant argues:

...the office of Alberta Government Services is not excluded from FOIPP under the enumerated exclusions of s. 4. FOIPP does not restrict a party in a civil litigation proceeding requesting production of a drivers [sic] abstract in the possession of Alberta Government Services.

[para. 12.] Government Services argues that the *Motor Vehicle Administration Act*, R.S.A. 1980, c. M-22, (the “MVAA”), creates the Registrar of Motor Vehicles and delegates to the Registrar the responsibility to maintain information about the state of an operator’s license, which includes the tracking of associated motor vehicle offences and penalties. The information pertaining to an operator’s record, from which a driver’s abstract is made, is held in the MOVES (Motor Vehicles and Drivers Licensing) database, which is under the control of the Registrar of Motor Vehicles Services. The record the Applicant applied for is made up of information taken from the MOVES database, and falls within the statutory functions of the Registrar. Since a driver’s abstract is made from information in the office of the Registrar of Motor Vehicles Services, section 4(1)(h)(ii) applies to the records at issue, and excludes those records from the application of the Act.

2. Discussion

(i) The Act

[para. 13.] Section 4(1)(h)(ii) of the Act reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(h) a record made from information

...

(ii) in the office of the Registrar of Motor Vehicle Services

[para. 14.] The definition of a “record” for the purposes of the Act reads:

1(1)(q) ‘record’ means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner....

(ii) The MVAA

[para. 15.] Section 2(1) of the MVAA provides for the appointment of a Registrar of Motor Vehicles, to assist the Minister in the administration of the MVAA:

2(1) In accordance with the Public Service Act there may be appointed a Registrar of Motor Vehicle Services, one or more deputy Registrars and any other officers and employees required for the administration of this Act.

[para. 16.] The MVAA does not set out a comprehensive list of the duties and functions of the Registrar in one place. Instead, they are scattered throughout the MVAA. I will highlight some of the relevant provisions of the MVAA. Section 3 of the MVAA provides that the Registrar is responsible for keeping key documents and information pertaining to the motor vehicles regime in his or her “office” on strict, specified terms:

3(1) The Minister may...authorize the Registrar to cause any item, including a document...that is filed or maintained in his office under this Act to be reproduced on a photographic medium, computer tape or similar device.

(2) A reproduction of an item referred to in subsection (1) certified by the Registrar

(a) stands in place of the original item,

(b) shall be treated as the original item for all purposes under this Act, and

(c) is admissible in evidence in any court of law in the same manner and for all purposes as if it were the original item.

(3) When the Minister is of the opinion that an item or a reproduction of an item referred to in subsection (1) is no longer required he may...authorize the Registrar, subject to subsection (4), to destroy or dispose of the item or its reproduction...

(4) The destruction or disposal of any item or its reproduction under this section shall be carried out subject to the regulations made under...the Government Organization Act.

[para. 17.] Section 13 of the MVAA requires a person holding an operator’s license to notify the Registrar forthwith of any changes in name or address, so that the Registrar’s records can be kept up to date:

13 When a person to whom an operator’s license is issued changes his name or address, or both, that person shall forthwith notify the Registrar of his new name or address, or both, as the case may be.

[para. 18.] A notice of suspension or cancellation of an operator’s licence will be prepared using the information in the records of the Registrar: section 19 of the MVAA. A Registrar’s certificate concerning the state of a license can be admitted as prima facie proof of the facts stated in the certificate without proof of the signature or official character of the person signing it: section 104 of the MVAA.

[para. 19.] Section 66 of the MVAA provides for an operator, or other persons, to obtain an abstract of an individual’s driving record. “Abstract” and “driving record” are not defined terms in the MVAA. It is generally understood that a driver’s abstract is a summary of the state of an operator’s license, showing such things as demerit points and suspensions.

[para. 20.] As noted in the 1998 audit report on Alberta Registries prepared by this Office and the Office of the Auditor General (the “1998 Audit”), private registry agents can obtain driver abstracts through direct on-line access to the information systems of the Motor Vehicles Registry, which includes the MOVES database. The MOVES database is

under the control of the Registrar of Motor Vehicles Services. Government Services submitted a Motor Vehicles Registry policy, titled “General Administration Number 1.10.02—Subject: Release of Information-Authorization for Driver Abstracts” (the “Policy”). The relevant portion reads:

An Agent shall advise a client requesting information regarding their personal driving record including their convictions, reinstatements and demerit totals to purchase a Driver Abstract through MOVES.

(iii.) Applying the Act to the records

[para. 21.] The provisions of section 4(1) exclude specific types of records, and not specific public bodies, from the application of the Act. A record must meet each of the requirements of section 4(1)(h)(ii) to be excluded from the application of the Act. The record must be made from “information” in the “office” of the Registrar of Motor Vehicle Services. Since the disputed issue is whether the information is in the “office” of the Registrar of Motor Vehicle Services for the purposes of section 4(1)(h)(ii), it may be useful to begin by considering what a registrar is, in general terms.

[para. 22.] Black’s Law Dictionary (6th Edition) defines a registrar as: “an officer who has the custody and charge of keeping a registry or register.” It defines a “registry” as a “...book authorized or recognized by law, kept for the recording or registration of facts or documents.” A registrar is therefore charged with keeping authoritative and reliable records.

[para. 23.] There is no definition of an “office” in the Act; nor is there a default definition of “office” in the *Interpretation Act*, R.S.A. 1980, c. I-7, to apply. In Order 97-017, Commissioner Clark considered the meaning of the reference to an “office” of a Member of the Legislative Assembly in section 4(1)(k) of the Act. In that Order, Commissioner Clark found that the reference to “office” in that provision meant considerably more than the physical space occupied by the Member. He held that “office” refers to the official capacities of a delegate, including the functions and duties associated with that delegate’s position. This interpretation of “office” was reiterated in Order 2001-014. I adopt this purposive approach to interpreting the reference in section 4(1)(h)(ii) to the “office” of the Registrar of Motor Vehicle Services.

[para. 24.] The Registrar of Motor Vehicle Services functions as the prime records-keeper for the administration of the MVAA, and must by law compile specific and current information in relation to the state of each operator’s licence that must be kept in the Registrar’s office. For the purposes of section 4(1)(h)(ii), I conclude that the “office” of the Registrar of Motor Vehicles includes his or her physical office, as well as the information systems that pertain to the Registrar’s official capacities, including functions and duties associated with that position.

[para. 25.] Government Services offered uncontroverted evidence that a driver’s abstract is made from information that is compiled by the Registrar in the MOVES database, as part of the Registrar’s official capacities under the MVAA. After reviewing that

evidence, the MVAA, the Policy, the submissions of the parties, and the records, I am satisfied that a driver's abstract is made from information in the office of the Registrar of Motor Vehicles. I find that the Applicant has applied for access to records made from information that is in the office of the Registrar of Motor Vehicle Services. Therefore, I find that section 4(1)(h)(ii) applies to the records, and that the records are excluded from the application of the Act. I have no jurisdiction to order the production of the records under the Act. Nor do I have the jurisdiction to consider Issue B. The Applicant cannot get access to the records under the Act.

VI. ORDER

[para. 26.] I make the following Order under section 68 of the Act:

1. I find that section 4(1)(h)(ii) of the Act applies to the records. I have no jurisdiction to order the production of the records. I also do not have jurisdiction to consider Issue B. The Applicant cannot get access to the records under the Act.

Frank J. Work, Q.C.
Acting Information and Privacy Commissioner