

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2002-029

May 7, 2003

ALBERTA GOVERNMENT SERVICES

File Number 2552

Office URL: <http://www.oipc.ab.ca>

Summary: The Alberta Motor Vehicle Industry Council (“AMVIC”) requires a criminal record check of individuals who apply for an automotive business licence under the *Fair Trading Act* (the “FTA”). The Commissioner found that Alberta Government Services and AMVIC, the delegate of the Director of Fair Trading under the FTA, have the authority under section 33(c) of the *Freedom of Information and Protection of Privacy Act* to collect criminal record checks for the automotive business licensing program under the FTA.

Statutes Cited: AB: *Automotive Business Regulation*, Alta. Reg. 192/99, ss. 3, 6; *Fair Trading Act*, R.S.A. 2000, c. F-2, ss. 125, 126(1)(a), 126(1)(b), 126(2), 127, 127(b)(vi), 127(b)(vii), 136; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(vii), 33, 33(a), 33(b), 33(c), 34, 34(1), 34(1)(a)(i), 34(2), 34(3), 53(1)(a), 53(1)(b), 65(3), 72(3), 72(3)(e), 72(3)(f); *Societies Act*, R.S.A. 2000, c. S-14.

Orders Cited: AB: Order 2001-039.

Authorities Cited: *Emerald Holdings Ltd. v. AMVIC*, September 10, 2001, an appeal board decision under the *Fair Trading Act*; *Ontario (Criminal Code Review Board) v. Doe* (1999), 47 O.R. (3d) 201 (C.A.); *R. v. Wholesale Travel Group Ltd.*, [1991] 3 S.C.R. 154.

I. BACKGROUND

[para 1] An individual complained to the Office of the Information and Privacy Commissioner (the “Office”) that the Alberta Motor Vehicle Industry Council (“AMVIC”) requires a criminal record check of individuals who apply for an automotive business licence under the *Fair Trading Act*, R.S.A. 2000, c. F-2. When the individual requested that I conduct a review under section 65(3) of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), I found that I had no authority to do so because section 65(3) requires that the individual’s own personal information has been collected. AMVIC had not collected the individual’s personal information because the individual had refused to allow AMVIC to do a criminal record check.

[para 2] However, the issue of AMVIC’s authority under the FOIP Act to collect personal information by way of a criminal record check was an important issue. Therefore, I decided to conduct an investigation and oral public hearing on my own motion under section 53(1)(a) of the FOIP Act, and to issue an Order under section 53(1)(b). Those provisions read:

53(1) In addition to the Commissioner’s powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations to ensure compliance with any provision of this Act...

(b) make an order described in section 72(3) whether or not a review is requested,...

[para 3] The Office issued a Notice of Investigation and Oral Public Hearing. I required Alberta Government Services and AMVIC to make submissions.

[para 4] I also invited the following to make submissions:

- Consumers’ Association of Canada, Alberta Chapter
- Alberta Civil Liberties Association
- Alberta Motor Association
- Edmonton John Howard Society
- Elizabeth Fry Society of Edmonton
- Representatives of and persons involved in the automotive industry

[para 5] Before the hearing, I received written submissions from Alberta Government Services, the Motor Dealers’ Association of Alberta (a member of AMVIC), and Kejan Enterprises Ltd. (operating as Miles Import Car Centre). Miles Import Car Centre also provided identical one-page letters from itself and 20 other automotive

businesses that had concerns about AMVIC's practice of requiring a criminal record check.

[para 6] At the hearing, representatives from Alberta Government Services and Miles Import Car Centre made oral submissions. Alberta Government Services called the Executive Director of AMVIC as a witness.

II. RECORDS AT ISSUE

[para 7] As the issue concerns the collection of personal information, there are no records directly at issue.

III. ISSUES

[para 8] The issues in the investigation are:

A. Does AMVIC's collection of personal information by way of a criminal record check fall within the FOIP Act?

B. Does AMVIC's collection of personal information by way of a criminal record check meet the requirements of section 33 of the FOIP Act?

C. Does AMVIC's collection of personal information by way of a criminal record check meet the requirements of section 34 of the FOIP Act?

[para 9] Miles Import Car Centre says there is a fourth issue:

Is AMVIC entitled to require an authorization allowing the future collection of personal information by way of a criminal record check at an unspecified future time and for an unspecified future purpose?

[para 10] I intend to consider that matter under section 33(c) of the FOIP Act, since it goes to the issue of whether the personal information AMVIC collects relates directly to and is necessary for an operating program or activity of a public body.

IV. DISCUSSION OF THE ISSUES

ISSUE A: Does AMVIC's collection of personal information by way of a criminal record check fall within the FOIP Act?

[para 11] The FOIP Act applies to "public bodies". Under the FOIP Act, I can make an order directed only to the head of a public body or a public body, as defined. For example, relevant provisions of section 72(3) of the FOIP Act read:

72(3) *If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:*

...

(e) require a public body [emphasis added] to stop collecting, using or disclosing personal information in contravention of Part 2;

(f) require the head of a public body [emphasis added] to destroy personal information collected in contravention of this Act.

[para 12] AMVIC is a society incorporated under the *Societies Act*, R.S.A. 2000, c. S-14. AMVIC is not a “public body” as defined in the FOIP Act. Therefore, I have no jurisdiction to make an order directed to AMVIC.

[para 13] The Public Body’s position is that AMVIC’s actions with respect to collection, use and disclosure are governed by the FOIP Act since:

(a) Under the *Fair Trading Act* (the “FTA”) and its regulations, the Director of Fair Trading (who is appointed by the Minister of the Public Body) has delegated certain powers to AMVIC;

(b) AMVIC has agreed in a Delegation Agreement with the Minister to abide by the provisions of the FOIP Act; and

(c) AMVIC has delegated its FOIP responsibilities back to the Minister.

[para 14] The Public Body submits that AMVIC’s collection of personal information by way of a criminal record check falls within the FOIP Act, as a delegated body of the Director of Fair Trading. I agree with the Public Body’s conclusion, for the following reasons.

[para 15] AMVIC exists because the Minister created AMVIC to perform the statutory functions that the Director of Fair Trading delegated to it under the FTA. AMVIC performs those statutory functions on the Minister’s and the Public Body’s behalf.

[para 16] Furthermore, AMVIC does not operate as an independent body when performing those statutory (“government”) functions because both the Director and the Minister retain control over AMVIC. Various provisions of section 136 of the FTA are examples of how the Director and the Minister retain control. The March 30, 1999 agreement entitled “Automotive Business Regulatory Services Delegation Agreement” (the “Agreement”, at Tab 8 of the Public Body’s written submission) between AMVIC and the Minister contains other examples of how the Minister retains control, including control over records in AMVIC’s custody and access to those records.

[para 17] Consequently, as AMVIC is not an independent body that the Legislature created by statute and to which the Legislature granted irrevocable powers, the Minister is not relieved of ministerial responsibility and accountability for AMVIC under the FOIP Act. The Minister, as head of the Public Body, cannot delegate to AMVIC (a non-public body performing “government” functions) the Minister’s responsibility and accountability as head under the FOIP Act, either directly by delegating FOIP responsibilities or by delegating responsibilities under legislation the Minister administers. To do so would gut the FOIP Act, which is something the Legislature did not intend when enacting the FOIP Act.

[para 18] In *Ontario (Criminal Code Review Board) v. Doe* (1999), 47 O.R. (3d) 201 (C.A.), the Ontario Court of Appeal decided that the Criminal Code Review Board “...cannot avoid the access provisions of the Act [Ontario’s *Freedom of Information and Protection of Privacy Act*] by entering into arrangements under which third parties hold custody of the Board’s records that would otherwise be subject to the provisions of the Act.”

[para 19] I agree, and would extend that principle to other FOIP responsibilities, including the collection of personal information. The Minister has recognized that principle in the Agreement with AMVIC, which is designed to ensure that AMVIC complies with the FOIP responsibilities by which the Minister and the Public Body are bound.

[para 20] I find that AMVIC’s collection of personal information by way of a criminal record check falls within the FOIP Act. Any order that I may issue would be directed to the Minister and the Public Body, who would be required to comply by requiring compliance by AMVIC, the delegate over whom they have control.

ISSUE B: Does AMVIC’s collection of personal information by way of a criminal record check meet the requirements of section 33 of the FOIP Act?

[para 21] Section 1(n) of the FOIP Act defines “personal information” to mean “recorded information about an identifiable individual”. A criminal record check falls within this definition of personal information. More specifically, a criminal record check is information about the individual’s criminal history, as provided by section 1(n)(vii).

[para 22] Section 33 of the FOIP Act sets out the authority by which a public body may collect personal information, as follows:

33 No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,

(b) that information is collected for the purposes of law enforcement, or

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

[para 23] The issue is whether the Public Body and the Director's delegate AMVIC have the authority to collect personal information by way of a criminal record check under section 33(a) or section 33(c). Section 33(b) is not an issue.

[para 24] In considering the authority to collect under section 33(a) and section 33(c), the following provisions of the FTA are relevant:

125 In this Part, "conviction" means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director's opinion, indicates that the person convicted is unsuitable to be licensed under this Act.

126(1) A person who wishes to be licensed or to have a licence renewed under this Act must submit to the Director

(a) an application on a form established by the Director,

(b) any additional information that is requested by the Director,

...

(2) The application and other information submitted under subsection (1) must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director.

127 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

...

(b) the applicant or licensee or any of its officers or employees

...

(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or

(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction; ...

1. Is there authority to collect under section 33(a) of the FOIP Act?

[para 25] The Public Body says that the FTA is the enactment of Alberta that expressly authorizes the Director to collect criminal record checks, as follows:

(a) Section 126(1)(a) and (b) of the FTA (Tab 10 of the Public Body’s written submission) state that a person who wishes to be licenced or have a licence renewed must submit an application on a form established by the Director, and must submit any additional information requested by the Director.

(b) Section 126(2) provides that the application and information submitted must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director.

(c) Section 127(b)(vi) and (vii) provide that the Director may refuse to issue or renew a licence, or may cancel or suspend a licence, if the applicant or licensee or any of its officers or employees fails to pay a fine “...under a conviction or fails to comply with an order made in relation to a conviction”, or if any of them “is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction”.

(d) “Conviction” has been very broadly defined in section 125 as “a conviction for an offence under any criminal or other law...”

[para 26] Section 33(a) requires that the collection of the personal information be “expressly” authorized by an enactment of Alberta or Canada. The Concise Oxford Dictionary, Ninth Edition, defines “express” to mean “definitely stated, not merely implied”.

[para 27] The foregoing provisions of the FTA do not definitely state that the Director is authorized to collect criminal record checks. Although the authority to collect is implied, that is not express authorization as required by section 33(a).

[para 28] I find that the FTA does not expressly authorize the Director and consequently the Director’s delegate AMVIC, to collect criminal record checks. Therefore, the Public Body and AMVIC do not have the authority to collect the criminal record checks under section 33(a) of the FOIP Act.

2. Is there authority to collect under section 33(c) of the FOIP Act?

[para 29] The Public Body argues that the collection of criminal record checks is also authorized under section 33(c) of the FOIP Act, since the information relates directly to and is necessary for the automotive business licensing program under the FTA. As set out in section 3 of the *Automotive Business Regulation*, Alta. Reg. 192/99, there are four

classes of automotive business licence: automotive sales licence, automotive leasing licence, automotive consignment licence, and automotive repair licence.

[para 30] The Public Body says that the FTA is consumer protection legislation. The Public Body's mandate is to protect the public interest under this legislation.

[para 31] The Public Body argues that the automotive industry attracts the criminal element, and gave the following examples: GST fraud; odometer rollbacks; overcharging, false parts and the substitute of used parts for new parts in the repair industry; and conversion of written-off vehicles. These examples involve financial harm and safety issues for the public. To reduce the criminal element, AMVIC screens individuals who apply for automotive business licences. Screening provides some level of confidence to consumers, who place reliance on licences. The Public Body maintains that the statutory duty to screen would be hampered by prohibiting criminal record checks. It cites Order 2001-039 to support criminal record checks as being necessary for the proper overall performance of the legislative mandate, and case law to support criminal record checks as being highly relevant to the automotive industry.

[para 32] The Public Body concludes:

The ability to check and obtain access to a criminal record both at the time of licence application or during the period of licensing is critical to the ability of the Director to exercise his statutory duty under the FTA and critical to the integrity of the licensing program. Failure to obtain access to this information and to complete proper background checks substantially increases the likelihood that active criminal elements will use provincial licensing to cause substantial harm to consumers or to use the business operation as a front for other criminal activities.

[para 33] Miles Import Car Centre says:

AMVIC refuses to consider any license application that does not include a signed and dated authorization for a criminal record check. AMVIC does not require a criminal record check for all directors, officers and shareholders of corporations involved in the auto repair business. It requires a signed authorization from the person completing the application form.

AMVIC advises applicants that it does not do criminal records checks on the person signing the application prior to granting a license except in rare circumstances but that it holds the signed authorization on file for later use.

...

A new authorization is required by AMVIC at each annual license renewal application.

[para 34] Several automotive businesses all provided identical letters supporting Miles Import Car Centre, and questioning the criminal record requirement, as follows:

Those of us who questioned the requirement were told that criminal record checks were not actually done before the granting of the license. It was made clear to us that a criminal record check was not required before granting the license but that AMVIC simply wished

to have on their file permission to obtain a criminal record check so that they could do so if for any reason they decided to do a check in the future.

[para 35] Miles Import Car Centre argues that, if a criminal record check were truly necessary prior to granting the licence, AMVIC would do the check for all applications for a licence, not selectively. Furthermore, AMVIC would require the authorizations for everyone in the automotive business, not just for the individual applying for the licence. As the licence is granted to the business, not to the individual applicant, the criminal record check also does not relate directly to the automotive business licensing program.

[para 36] Since the criminal record checks are not performed, as a rule, at the time of granting the licence, Miles Import Car Centre maintains that AMVIC's holding an authorization on file must be for another purpose. Then the issue is:

Is AMVIC entitled to require an authorization allowing the future collection of personal information by way of a criminal record check at an unspecified future time and for an unspecified future purpose?

[para 37] The "Application for an Automotive Business Licence" (the "Application Form" at Tab 18 of the Public Body's written submission) asks whether the applicant or any of the partners, directors or officers of the partnership or corporation has "...been convicted of an offence (excluding traffic violations) under any criminal or other law in force in Alberta or elsewhere for which a pardon has not been granted". If the applicant's answer is "yes" regarding the applicant, the applicant is asked to provide complete details on a separate sheet. If the applicant's answer is "yes" regarding an individual other than the applicant, the Public Body explained that the other individual submits the information attached to the applicant's application or submits the information under separate cover to AMVIC.

[para 38] The Public Body provided me with AMVIC's draft licensing policy (Tab 3 of the Public Body's written submission), which says that when a person indicates on the Application Form that the person has a criminal record, a criminal record check is done if:

- The offence happened within the last five years and
- The offence was serious in nature (fraud, murder, manslaughter, assault, misrepresentation, theft, break and enter, etc.) and/or
- There is a history of offences and/or
- There is evidence the individual has no respect for the law and/or
- A consumer may be hurt by the individual's actions and/or
- The individual never revealed all convictions or was untruthful on the application.

[para 39] The Public Body said that AMVIC looks for relevance of criminal history to the industry (theft; fraud convictions, especially if automotive-related; repeated pattern of disregard for the law; convictions in the last few years), citing case law in support of what criminal history to consider when licensing. The Public Body explained that, if

AMVIC has concerns, it will request that a criminal record check be done on the individual. It does not do criminal record checks on everyone, and has licensed some people with criminal records.

[para 40] AMVIC's draft licensing policy also sets out instances where random criminal record checks may be done:

- Notified by RCMP or other informant that the individual has a criminal record when the applicant indicated he/she has not
- Currently under investigation
- Information provided does not follow the normal sequence of events
- Having difficulty with or applicant seems nervous

[para 41] The Public Body says that AMVIC does random checks, even if nothing is declared on the Application Form. The Public Body cites *Emerald Holdings Ltd. v. AMVIC*, September 10, 2001, an appeal board decision under the FTA, as support for checking rather than relying on an applicant's statements on the application form. AMVIC checks about 10% of applicants selectively. On renewal or during the process, a check is usually "event inspired", meaning that AMVIC will check if something comes to its attention.

[para 42] There is no issue that the operating program or activity of the Public Body and the Director's delegate AMVIC is the automotive business licensing program, which is clearly established by the FTA, with further specifics contained in the *Automotive Business Regulation*. The issue is whether criminal record checks relate directly to and are necessary for that operating program or activity.

[para 43] Section 127(b)(vi) and (vii) of the FTA are important in deciding the issue. Those provisions of the FTA put criminal history in the Director's purview. In my view, this is evidence that the Legislature has decided that criminal history relates directly to and is necessary for the automotive business licensing program.

[para 44] What of Miles Import Car Centre's arguments to the contrary?

[para 45] The automotive business licensing program includes issuing, renewing, cancelling and suspending licences (section 127 of the FTA). Therefore, I must focus on the entire licensing program in deciding whether criminal record checks relate directly to and are necessary for that program. I cannot focus on just one aspect of the program, such as whether a criminal record check relates directly to and is necessary for issuing a licence.

[para 46] The automotive business licensing program has two aspects. The first aspect is screening. This encompasses the power to issue and renew licences.

[para 47] The FTA does not require a criminal record check for all applicants before a licence is issued or renewed (or cancelled or suspended). Instead, section 127 of the

FTA gives the Director the discretion (“may”) to refuse to issue or renew a licence for any number of reasons, including when the applicant or licensee or any of its officers or employees has been convicted of an offence referred to in section 125.

[para 48] In exercising discretion under section 127, AMVIC decides whether to do a criminal record check. It considers what information about convictions the applicant has supplied in the Application Form, and considers those matters set out in its draft licensing policy concerning convictions.

[para 49] In my view, a criminal record check is no less necessary just because AMVIC, in exercising its discretion under section 127, decides to check selectively on the basis of policy considerations and information supplied, rather than checking before each licence is issued or renewed.

[para 50] Furthermore, a criminal record check is no less necessary just because AMVIC does not require checks for everyone in the automotive business. The FTA also does not contain any such requirement.

[para 51] Moreover, I disagree with the argument that the criminal record check does not relate directly to the automotive business licensing program because the licence is granted to the business, not to the individual applicant. Section 6 of the *Automotive Business Regulation*, which deals with death of a licensee, contemplates that a licence is issued to the individual who applies for it. Section 3 says that the licence authorizes the person to engage in the particular automotive business. I conclude that the licence is issued to the individual to engage in the business; it is not issued to the business.

[para 52] The second aspect of the automotive business licensing program is monitoring. This is implied by the power to cancel and suspend licences. The Public Body and the Director’s delegate AMVIC perform an ongoing monitoring function. They are always monitoring, and section 127 makes criminal convictions part of what they monitor. Because section 127 says that a licence can be cancelled or suspended, monitoring for criminal convictions can occur at any time during the term of an existing licence. AMVIC therefore has the authority to do a criminal record check at any time to see if there has been a conviction. It follows that AMVIC’s holding on file an applicant’s authorization to do a criminal record check is for the purpose of AMVIC’s performing the ongoing monitoring function under the FTA.

[para 53] I find that criminal record checks relate directly to and are necessary for the automotive business licensing program under the FTA. Therefore, the Public Body and the Director’s delegate AMVIC have the authority to collect the criminal record checks under section 33(c) of the FOIP Act.

[para 54] Miles Import Car Centre also says:

It could be argued that a criminal record check might be appropriate for new businesses, or where there was a renewal in circumstances where there had been complaints of dishonesty received under the *Fair Trading Act*, but those arguments lose their attraction in situations

where the renewal sought is for a business of many years standing where there is no history of complaint...

[para 55] I believe that the underlying issue in that statement is about the legitimate expectations of a person, who has been in business for years, not to have the rules governing the business changed. Although it will be of no comfort to Miles Import Car Centre, I have no jurisdiction to consider the wisdom of changing the rules. My jurisdiction extends only to finding that AMVIC's collection of personal information by way of a criminal record check meets the requirements of section 33 of the FOIP Act.

ISSUE C: Does AMVIC's collection of personal information by way of a criminal record check meet the requirements of section 34 of the FOIP Act?

[para 56] Section 34(1) of the FOIP Act requires that personal information be collected directly from the individual the information is about, unless one of the exceptions allowing for indirect collection applies.

[para 57] AMVIC does not collect the criminal record check directly from the applicant, but from the Canadian Police Information Centre ("CPIC"), which is an indirect collection.

[para 58] Section 34(1)(a) contains provisions allowing for the indirect collection of personal information. Section 34(1)(a)(i) reads:

34(1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(i) that individual,...

[para 59] In the Application Form, the applicant authorizes the indirect collection of his or her own criminal record check, as follows:

I authorize the Alberta Motor Vehicle Industry Council to undertake a criminal record check on myself prior to or during the period of a licence granted pursuant to this application.

[para 60] My personal view is that it is actually preferable for an applicant to get his or her own criminal record check from CPIC and provide it to AMVIC, rather than empowering AMVIC to get it from CPIC. At least that way an applicant knows what is being collected and is in a position to explain extenuating circumstances.

[para 61] Nevertheless, I agree with the Public Body that AMVIC's indirect collection of the applicant's criminal record check meets the requirements of section 34(1)(a)(i) of the FOIP Act because the individual applicant has authorized another

method of collection. Furthermore, I note that the applicant authorizes the criminal record check prior to or during the period of the licence granted under the application.

[para 62] As previously mentioned, the Application Form also asks the applicant whether any of the partners, directors or officers of the partnership or corporation have been convicted of an offence. The Public Body explained that those individuals submit the information attached to the applicant's Application Form or submit the information under separate cover to AMVIC. The Public Body also says that AMVIC does not ask for the names of officers/ employees/ partners/ directors. Furthermore, the applicant authorizes only the applicant's criminal record check, not the criminal record check of anyone else. AMVIC does not check for partners', directors' and officers' criminal records unless AMVIC has authorization from those individuals.

[para 63] I accept the Public Body's evidence, and find that there is not an unauthorized indirect collection of criminal record checks of individuals who are not applicants.

[para 64] Miles Import Car Centre argues that the authorization under section 34(1)(a)(i) is not voluntary in any event, it is extorted.

[para 65] The Public Body argues that there is no extortion in not providing consent. The Public Body cites the Supreme Court of Canada case of *R. v. Wholesale Travel Group Ltd.*, [1991] 3 S.C.R. 154, at paragraph 158, to support its argument that a regulated person is taken to have made a choice to engage in the regulated activity:

The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.

[para 66] And again at paragraph 167: "By virtue of the decision to enter the regulated field, the regulated person...can be taken to have accepted certain terms and conditions of entry."

[para 67] In Order 2001-039, I found that section 34(1)(a)(i) does not require express written consent, but only authorization, which I concluded was a matter of substance. I am not persuaded here that I should deviate from my previous decision.

[para 68] I find that AMVIC's collection of personal information by way of a criminal record check meets the requirements of section 34 of the FOIP Act.

[para 69] Miles Import Car Centre also argues that AMVIC should not be exempted from section 34(2) of the FOIP Act, which sets out information requirements when a

public body is collecting personal information directly from an individual. However, section 34(2) applies only to direct collection, not to indirect collection. As AMVIC collects the criminal record checks indirectly, section 34(2) does not apply.

[para 70] The Public Body also argues that section 34(3) of the FOIP Act applies. However, as the indirect collection of a criminal record check is authorized by the applicant, I do not find it necessary to consider section 34(3).

V. ORDER

[para 71] AMVIC's collection of personal information by way of a criminal record check falls within the FOIP Act.

[para 72] AMVIC's collection of personal information by way of a criminal record check meets the requirements of section 33 and section 34 of the FOIP Act. As those requirements have been met, there is no order to issue to the Public Body or to the Minister as head of the Public Body.

[para 73] Good law results from sound arguments, questioned and tested. I appreciate the efforts of Miles Import Car Centre and the Public Body in this regard.

Frank Work, Q.C.
Information and Privacy Commissioner