

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER
ORDER M2004-003

June 20, 2005

REGISTRAR OF MOTOR VEHICLE SERVICES

LINDA COLLINS SKIP TRACING SERVICES

Review Number M0001

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Summary: The Applicant applied under the *Access to Motor Vehicle Information Regulation*, Alta Reg. 140/2003, (AMVIR) for personal driving and motor vehicle information from the Registrar of Motor Vehicle Services. The Applicant applied under sections 2(1)(a) (responsibility and accountability for actions with respect to motor vehicles), 2(1)(m) (proceeding before a court or quasi-judicial body) and 5(1)(c) (injury or damage to a motor vehicle) of AMVIR. The Registrar of Motor Vehicle Services granted the Applicant access to some personal driving and motor vehicle information under section 2(1)(d) (for the purpose of complying with a subpoena, warrant or order) and section 2(1)(p) (pursuant to consent). The Registrar of Motor Vehicle Services did not, however, grant access pursuant to sections 2(1)(a), 2(1)(m) and 5(1)(c) of AMVIR .

The issue before the Adjudicator was whether the Registrar of Motor Vehicle Services properly applied sections 2(1)(a) and 2(1)(m) to the Applicant's request and whether the Applicant was entitled to access personal driving and motor vehicle information pursuant to section 5(1)(c).

The Adjudicator held that the Registrar of Motor Vehicle Services erred in its interpretation of sections 2(1)(a) and 2(1)(m) and improperly exercised its discretion under those two sections. The Adjudicator ordered the Registrar of Motor Vehicle

Services to reconsider its decision regarding these two sections. In addition, the Adjudicator held that the Registrar of Motor Vehicle Services erred in its interpretation of section 5(1)(c). However, the Adjudicator found that the Applicant was not entitled to access personal driving and motor vehicle information under this section as there was insufficient evidence that the Applicant fulfilled the requirements of this section.

Statutes Cited:

Access to Motor Vehicle Information Regulation, Alta Reg. 140/2003, ss. 2(1)(a), 2(1)(d), 2(1)(e), 2(1)(i), 2(1)(m), 2(1)(p), 5(1)(c)

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, ss. 39(1)(a), 40(1)(c), 40(1)(v), 41, 61, 74.7

Traffic Safety Act, R.S.A. 2000, c. T-6, s. 8(2)

Cases Cited:

Baker v. Canada (Minister of Citizenship and Immigration) [1999] 2 S.C.R. 817

R. v. Kelly [1992] 2 S.C.R. 170

Orders Cited:

AB: F2002-019, M2004-002

I. BACKGROUND

[para 1] On April 7, 2004, Linda Collins Skip Tracing Services (the “Applicant”) applied for information from the Registrar of Motor Vehicle Services (the “Registrar”) under the *Access to Motor Vehicle Information Regulation*, Alta. Reg. 140/2003 (“AMVIR”). The Applicant’s request for information read as follows:

*Name, address, motor vehicle make model & VIN# Archive searches and court certificates to confirm ownership at the time/date of collision.
Motor vehicle search evidence is paramount to Applications for orders for substitutional service*

[para 2] The Applicant applied for access to this information under sections 2(1)(a) (responsibility and accountability for actions with respect to motor vehicles), 2(1)(m) (proceeding before a court or quasi-judicial body) and 5(1)(c) (injury or damage to a motor vehicle) of AMVIR.

[para 3] On April 25, 2004, the Executive Director of Registry Services wrote to the Applicant informing the Applicant that the Applicant had been approved to obtain access to “Limited Demographic” information under sections 2(1)(d) (for the purpose of

complying with a subpoena, warrant or order) and 2(1)(p) (consent) of AMVIR. Enclosed with this letter was a copy of an access agreement.

[para 4] On May 3, 2004, the Executive Director of Registry Services wrote to the Applicant once again. In that letter the Executive Director requested that the Applicant sign and return, before May 14, 2004, two copies of the access agreement which the Registrar had previously mailed to the Applicant.

[para 5] On July 2, 2004, this Office received a request for review from the Applicant. In that letter the Applicant stated that she would like a review of the Registrar's decision. The Applicant stated that she would like access to full motor vehicle demographic searches, i.e. name, date of birth, physical appearance, physical and mailing address, as well as access to registered vehicle searches.

[para 6] The matter was set down for a written inquiry. The Registrar submitted an initial brief. The Applicant did not submit an initial brief. The Registrar and the Applicant did not submit rebuttal briefs.

II. ISSUES

[para 7] There are three issues outlined in the inquiry notice:

1. Did the Registrar properly apply section 2(1)(a) of the *Access to Motor Vehicle Information Regulation*?
2. Did the Registrar properly apply section 2(1)(m) of the *Access to Motor Vehicle Information Regulation*?
3. Did the Registrar properly apply section 5(1)(c) of the *Access to Motor Vehicle Information Regulation*?

[para 8] I note that section 5(1)(c) is not a discretionary provision. As such, for the purposes of this Order, I have rephrased issue #3 to read as follows: Does section 5(1)(c) of the *Access to Motor Vehicle Information Regulation* require the Registrar to disclose personal driving and motor vehicle information to the Applicant?

III. DISCUSSION

1. Did the Registrar properly apply section 2(1)(a) of the *Access to Motor Vehicle Information Regulation*?

a. General

[para 9] Section 2(1)(a) reads:

2(1) The Registrar may, on request, release information,

(a) on the Registrar's motor vehicle information system, collected and compiled for the purpose of identifying licensed operators and registered owners of motor vehicles to ensure responsibility and accountability for their actions with respect to motor vehicles, only for that purpose or for a use consistent with that purpose, ...

b. The Registrar's interpretation of section 2(1)(a)

[para 10] The Registrar states that the Applicant is not entitled to access personal driving and motor vehicle information under section 2(1)(a). The Registrar states that it believes that the Applicant is requesting the information for debt collection purposes, that this purpose does not fall within section 2(1)(a) nor is it a use consistent with that purpose. The Registrar states that the purposes outlined under section 2(1)(a) are to ensure responsibility and accountability for breaches under the *Traffic Safety Act* and to hold individuals civilly accountable for actions while using a motor vehicle.

[para 11] The Registrar also argued that the Applicant is not entitled to the information under section 2(1)(a) when the Applicant acts as an agent for another person. The Registrar states that AMVIR does not recognize this purpose. The Registrar states that the Legislature has specifically identified agents within AMVIR where it intended the information to be disclosed in this manner. The Registrar referred to section 2(1)(e) which specifically permits disclosure to "an agent of the Registrar" and section 2(1)(i) which specifically permits disclosure to a person under contract with the public body for audit purposes.

[para 12] After a review of all the arguments of the parties, I find that the Registrar's interpretation of section 2(1)(a) is in error.

[para 13] The Applicant's access request and request for review stated that the Applicant required access for three broad purposes: (1) to locate a person in order to serve a claim, (2) to locate assets of an individual or corporation and (3) to confirm ownership of a vehicle at the date/time of collision for the purposes of preparing a claim against the owner.

[para 14] I find that the use of the information to confirm ownership of a vehicle at the date/time of a collision in order to prepare a claim is a purpose that falls within section 2(1)(a). I find that this purpose relates directly to a person's responsibility and accountability for a person's actions "with respect to motor vehicles".

[para 15] I also find that the Applicant's use of the information to locate a person to serve or to locate assets in regard to a motor vehicle claim or in regard to breaches of the *Traffic Safety Act* are purposes that fall within section 2(1)(a). The use of this information ensures responsibility or accountability for a person's actions with respect to a motor vehicle.

[para 16] However, I find that an applicant's use of the information in order to locate a person or assets outside of a motor vehicle claim or outside of the *Traffic Safety Act* would not fall within section 2(1)(a).

[para 17] I also find that an applicant's use of the information outside of a motor vehicle claim or outside of the *Traffic Safety Act* would not be considered a "use consistent" under AMVIR. In coming to this conclusion, I adopted the principles within section 41 of the FOIP Act. Section 41 of the FOIP Act refers to section 39(1)(a) and 40(1)(c) of the FOIP Act. It does not directly apply to AMVIR. However, I find that the principles within section 41 are, nevertheless, suitable guidelines to interpret the phrase "use consistent" under AMVIR. In my view, in order for a use to be consistent under AMVIR, the use must fulfill the following criteria:

- (a) it should have a reasonable and direct connection to that purpose, and
- (b) it must be necessary for performing the statutory duties of, or for operating a legally authorized program of, the person that uses the information.

[para 18] In the case before me, the Applicant's use of personal driving and motor vehicle information in order to locate a person or to locate assets of an individual outside of a motor vehicle claim or outside of the *Traffic Safety Act* are not purposes that are reasonably and directly connected to the purpose of ensuring responsibility or accountability for a person's actions with respect to a motor vehicle, nor is there evidence before me that the use is necessary for performing a statutory duty or operating a legally authorized program of the Applicant.

[para 19] After a review of the arguments by the parties, I also find that the Registrar's interpretation of section 2(1)(a) regarding agency is in error. I find that section 2(1)(a) does not make a distinction between principals and agents.

[para 20] In Order M2004-002, I addressed this issue of agency and found that AMVIR permitted an agent to access personal driving and motor vehicle information. I referred to section 8(2) of the *Traffic Safety Act* which states that the Registrar may only release personal driving and motor vehicle information to "persons" identified within the regulations. I held that the term "persons" include agents who act on behalf of another person. In support of my finding I referred to the Supreme Court of Canada decision of *R. v. Kelly* [1992] 2 S.C.R. 170. I held that an agent not only has the ability to exercise its own rights and duties, but that it is also capable of exercising its principal's rights and duties.

c. The Registrar's exercise of discretion under section 2(1)(a)

[para 21] After a review of the arguments by the parties, I find that the Registrar improperly exercised its discretion when it made the decision to deny access to the

Applicant. I find that there is insufficient evidence before me that the Registrar reviewed the Applicant's request on its own merits under section 2(1)(a). I find that the Registrar instead relied on its policy and prior decisions which categorized, by profession or occupation, which applicants were entitled to access personal driving and motor vehicle information and which applicants were not so entitled.

[para 22] In coming to this conclusion, I took into account the Registrar's correspondence to the Applicant, Notification 01/2004 and the Registrar's reliance on its Third Party Model policy.

[para 23] In the Registrar's letter to the Applicant, dated April 25, 2004, the Registrar denied the Applicant access to the information under section 2(1)(a). However, in that letter the Registrar did not provide the Applicant with reasons as to why the Applicant was denied access. The Registrar simply stated that the Applicant was entitled to "limited demographic" information pursuant to two other sections of AMVIR, sections 2(1)(d) and 2(1)(p), which the Applicant had not included in its request. The Registrar also did not provide an explanation in its May 3, 2004 letter as to why it denied the Applicant access other than to say that, for some AMVIR purposes, consent is required to access personal information of a person. Notification 01/2004 also did not provide reasons as to why some organizations and not others were given access under section 2(1)(a).

[para 24] I also note that the Registrar's submission relied on a document from a website of a corporation entitled American Recovery Systems Inc. This document described what it considered to be the functions of a skip tracer. However, I do not have any evidence before me as to whether this website information is accurate or whether the Registrar discussed the content of the document with the Applicant to determine whether it accurately described the Applicant's business.

[para 25] Lastly, I find that the Registrar's heavy reliance and inconsistent application of its Third Party Model policy also contributed to the Registrar's improper exercise of discretion. The Registrar states that the Third Party Model policy does not permit the Applicant, when acting as an agent, to access personal driving and motor vehicle information.

[para 26] Since I cannot exercise my discretion in the place of the Registrar, I must return the decision to the Registrar for reconsideration. Section 74.7(2)(b) of FOIP is the mechanism by which I may return a decision, on the ground that the discretion has been improperly exercised

2. Did the Registrar properly apply section 2(1)(m) of the Access to Motor Vehicle Information Regulation?

a. General

[para 27] Section 2(1)(m) reads:

2(1) The Registrar may, on request, release information,

...

(m) only to a person for use in or for the purposes of, a proceeding before a court or quasi-judicial body,

b. The Registrar's interpretation of section 2(1)(m)

[para 28] The Registrar states that in order for the Applicant to obtain access under section 2(1)(m), the Applicant must currently be involved in a proceeding that has commenced at the time of the disclosure. In coming to this conclusion, the Registrar stated that section 2(1)(m) should be interpreted similar to section 40(1)(v) of the FOIP Act and, in this regard, referred to Order F2002-019.

[para 29] The Registrar also argued that AMVIR does not permit the Applicant to access the personal driving and motor vehicle information under section 2(1)(m) when it acts as an agent for another person.

[para 30] After a review of all the arguments of the parties, I find that the Registrar's interpretation of section 2(1)(m) is in error. I find that section 2(1)(m) does not require the Applicant to be a party to a proceeding that has already commenced. In coming to this conclusion, I took into account the wording of section 2(1)(m). I also took into account that the wording of section 40(1)(v) of the FOIP Act differs substantially from section 2(1)(m) of AMVIR.

[para 31] Section 40(1)(v) of the FOIP Act reads:

40(1) A public body may disclose personal information only

...

(v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,

[para 32] Section 40(1)(v) of the FOIP Act allows a public body to disclose information for use in a proceeding to which the Government of Alberta or the public body is already a party. In other words, it arguably permits the public body to use information it already has in its possession. As such, it is reasonable to expect that a public body would be currently involved in a proceeding before it discloses the information.

[para 33] Conversely, section 2(1)(m) of AMVIR contemplates disclosure to a person for use by that person in, or for the purpose of, a proceeding. Arguably, an individual who contemplates filing a statement of claim or initiating a proceeding would need the motor vehicle information in advance in order to prepare the claim and begin the process. It would therefore make sense for the Registrar to disclose information under section 2(1)(m) before a proceeding begins. The phrase “for the purposes of a proceeding” contemplates this.

[para 34] I also find that the Registrar’s interpretation of section 2(1)(m) in regard to agency is in error for the same reasons outlined under section 2(1)(a). I find that section 2(1)(m) does not distinguish between principals and agents. I find that the Registrar erred in this interpretation.

c. The Registrar’s exercise of discretion under section 2(1)(m)

[para 35] I find that the Registrar improperly exercised its discretion when it made the decision to deny access to the Applicant under section 2(1)(m). I find that there is insufficient evidence before me that Registrar reviewed the Applicant’s application and decided the application on its own merits. It appears that the Registrar instead relied on its policy and the prior categorization of applicants to make its decision.

[para 36] In coming to this conclusion, I took into account the Registrar’s failure to provide the Applicant with reasons in its correspondence and within Notification 01/2004. I also took into account the Registrar’s heavy reliance and inconsistent application of its Third Party Model. I have discussed each of these concerns previously in this Order under section 2(1)(a).

[para 37] In addition, I also took into account the Registrar’s inconsistent application of section 2(1)(m). The Registrar’s submission maintains that section 2(1)(m) does not permit an applicant to access information in advance of proceedings. However, the Registrar’s submission clearly states that the Registrar nevertheless approved disclosures under section 2(1)(m) in advance of proceedings to lawyers who are members of the Alberta Bar, regulatory agencies of the Government of Alberta or the Government of Canada and law enforcement agencies. I find that this inconsistent application of section 2(1)(m) contributed to the Registrar’s improper exercise of discretion. I also intend to send this issue back to the registrar for reconsideration

3. Does section 5(1)(c) of the *Access to Motor Vehicle Information Regulation* require the Registrar to disclose personal driving and motor vehicle information to the Applicant?

a. General

[para 38] Section 5(1)(c) reads:

5(1) The Registrar, on request,

...

(c) must release to a person who is injured or whose property is damaged by a motor vehicle, or to that person's personal representative if that person is killed by a motor vehicle, any information on the Government's records pertaining to the proof of financial responsibility of any owner or driver of the motor vehicle.

b. The Registrar's interpretation of section 5(1)(c)

[para 39] The Registrar states that the Applicant is not entitled to access the information under section 5(1)(c) as the Registrar does not collect or compile any information regarding the proof of financial responsibility of any owner or driver of a motor vehicle. As such, the Registrar states that there is no such information that can be disclosed under this section. The Registrar states that it made this clarification in a new notification, Notification 04/2004, which was released on the Registrar's website on October 14, 2004. In addition, the Registrar states that section 5(1)(c) only refers to information found within "Government records". The Registrar states that the information held by the Registrar does not equate to information held by the Government.

[para 40] Lastly, the Registrar states that the Applicant does not fulfill the requirements of section 5(1)(c). Section 5(1)(c) states that the Registrar must disclose "to a person who is injured or whose property is damaged by a motor vehicle, or to that person's personal representative if that person is killed by a motor vehicle...". The Registrar states that the Applicant does not fall within any of these categories and that this section does not permit the Applicant to access this information as an agent on behalf of another entity.

[para 41] After a review of all the arguments of the parties, I find that the Registrar's interpretation of section 5(1)(c) is in error.

[para 42] First I find the Registrar erred when it determined that it does not collect or compile any information pertaining to the proof of financial responsibility of any owner or driver of a motor vehicle. In the Registrar's submission, the Registrar stated that information available in the Registrar's database is divided into three types: Type I, Type II and Type III. Type I Information consists of ownership and vehicle information, operator (driver) information and demographic information. This information includes the identity of the Registered Owner. I find that this information, by its very description, relates to proof of financial responsibility as it relates to the person that may ultimately be responsible for the vehicle. I also note that, arguably, this information may not be the only information that fulfills this criteria. There may be other information collected by the Registrar that does the same.

[para 43] In addition, I do not agree with the Registrar's contention that its information cannot be categorized as information found within "Government Records". The affidavit submitted by the Registrar states that as of 1997, Alberta Registries came

under the jurisdiction of Alberta Government Services. Although the Registrar now uses private registry agents to deliver services, I do not find that the Registrar should, for the purposes of section 5(1)(c) be considered distinct from the Alberta Government.

[para 44] Lastly, I do not agree with the Registrar's submission that the Applicant is not entitled to access the personal driving and motor vehicle information under section 5(1)(c) when acting as an agent for another person. I do not agree with this for the same reasons that I outlined under section 2(1)(a). I find that section 5(1)(c) does not distinguish between principals and agents.

[para 45] However, notwithstanding the Registrar's error in the interpretation of section 5(1)(c), I find that the Applicant is not entitled to access personal driving and motor vehicle information under section 5(1)(c) of AMVIR. There is no evidence before me that the Applicant fulfills the requirements of this section. There is no evidence before me that the Applicant is a person who has been injured, or whose property has been damaged by a motor vehicle, or is a personal representative of a person killed by a motor vehicle accident, or an agent of any of the above. I therefore confirm the Registrar's decision under section 5(1)(c).

IV. REQUIREMENT OF WRITTEN REASONS

[para 46] In Order M2004-002, I found that the duty of procedural fairness required the Registrar to provide the Applicant with written reasons as part of its reconsideration given the significance of the Registrar's decision to the Applicant's livelihood. In support of my finding, I referred to the Supreme Court of Canada decision of *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817.

[para 47] I find the Applicant's situation in this inquiry is similar to that of the Applicants' situation in Order M2004-002. As such, I also intend to order the Registrar to provide the Applicant with written reasons as part of its reconsideration.

V. ORDER

[para 48] I make this Order under section 74.7 of the FOIP Act.

[para 49] I order the Registrar to reconsider its decision to deny the Applicant access to personal driving and motor vehicle information under section 2(1)(a) of AMVIR.

[para 50] I order the Registrar to reconsider its decision to deny the Applicant access to personal driving and motor vehicle information under section 2(1)(m) of AMVIR.

[para 51] I find that the Applicant is not entitled to access personal driving and motor vehicle information under section 5(1)(c) of AMVIR. I confirm the Registrar's decision not to provide the Applicant with access under section 5(1)(c).

[para 52] Pursuant to section 74.7(3) of the FOIP Act, I require the Registrar to give the Applicant written reasons for its reconsidered decisions.

[para 53] I further order the Registrar to advise me of its decisions, along with a copy of its written reasons within 50 days of receiving a copy of this Order.

Dave Bell
Adjudicator