

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER M2005-001

August 4, 2005

REGISTRAR OF MOTOR VEHICLE SERVICES

AFFORDABLE PROFESSIONAL GROUP, INC.

Review Number M0002

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Summary: On May 1, 2004 the *Access to Motor Vehicle Information Regulation* (“AMVIR”) came into force. AMVIR sets out the criteria the Registrar of Motor Vehicle Services (the “Registrar”) must consider when deciding whether a person may be given access to personal driving and motor vehicle information.

The Applicant applied for access under sections 2(1)(a)(ensuring accountability of motor vehicle owners), 2(1)(m)(for the purposes of a court proceeding) and 5(1)(c)(injury or damage to a motor vehicle) of AMVIR. The Registrar granted the Applicant access under section 2(1)(p) (release by consent). The Registrar did not, however, grant access pursuant to sections 2(1)(a), 2(1)(m) and 5(1)(c) of AMVIR.

At inquiry, the Registrar raised a preliminary argument that the Adjudicator was unable to review its decisions as they pertain to individual applicants and could only review the categories as set out in Notification 01/2004. The Adjudicator found that the Commissioner or his delegate was capable of reviewing the Registrar’s discretion as it relates to individual applicants.

The Adjudicator held that the Registrar 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 to reconsider its decision regarding these two sections. In addition, the Adjudicator held that the Registrar 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 the section.

Statutes Cited: AB: *Access to Motor Vehicle Information Regulation*, Alta. Reg. 140/2003, ss. 2(1)(a), 2(1)(m), 2(1)(p), 4, 5(1)(c). *Freedom of Information and Protection of Privacy Act* R.S.A. 2000, c.F-25, ss. 74.2, 74.7, 74.7(2)(b), 74.7(3). *Traffic Safety Act* R.S.A. 2000, c. T-6, ss. 8(2), 8(4).

Cases Cited: *Baker v. Canada (Minister of Citizenship & Immigration)* [1997] 2 S.C.R. 817, *R. v. Kelly* [1992] 2 S.C.R. 170.

Orders Cited: AB: M2004-002, M2004-003.

I. BACKGROUND

[para 1] Section 8(2) of the *Traffic Safety Act*, R.S.A. 2000, c. T-6 (the “TSA”) provides that the Registrar of Motor Vehicle Services (the “Registrar”) shall only release personal driving and motor vehicle information in accordance with the regulations made under section 8(4) of the TSA. As drafted, Section 8(2) of the TSA is authority for the proposition that an applicant must fall within the criteria for release set out in the regulation so as to be able to receive personal driving and motor vehicle information. This is in contrast to the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) which sets out a right of access to information subject only to limited and specific exceptions stated within that Act.

[para 2] On May 1, 2004, the *Access to Motor Vehicle Information Regulation* (“AMVIR”) came into force. AMVIR sets out the criteria that the Registrar must consider when deciding whether a person may be given access to personal driving and motor vehicle information. A review of the Registrar’s decision is provided by Part 5, Division 1.1 of the FOIP Act.

[para 3] On February 18, 2004 the Applicant applied for access pursuant to sections 2(1)(a) (ensuring accountability of motor vehicle owners), 2(1)(m) (for the purposes of a court proceeding) and 5(1)(c) (injury or damage to a motor vehicle). In the application, the Applicant’s type of business was described as “claims management.”

[para 4] The Applicant further stated that information requested would be used to:

“Locate people only to obtain current addresses for service of claims. Confirm ownership we handle subrogated claims for insurance companies and need to establish financial responsibility [sic] driver/owner. No motor vehicle search is conducted without a claim or impending claim.”

[para 5] By letter dated April 29, 2004, the Registrar granted the Applicant access under section 2(1)(p) (release by consent) of AMVIR. The letter did not specify the grounds on which access under the requested sections of AMVIR was denied.

[para 6] In accordance with section 4 of AMVIR, the Registrar issued Notification 01/2004, dated May 12, 2004 specifying the categories of persons and organizations that were granted or denied access to information. "Claim management companies" as a category were denied direct access under section 2(1)(a) of AMVIR. Although the Applicant also applied under sections 2(1)(m) and 5(1)(c) of AMVIR, the Notification made no reference to "claim management companies" in denying direct release under those sections.

II. PRELIMINARY ISSUE

What is the scope of review under Division 1.1 of the FOIP Act?

[para 7] The Registrar argued that Division 1.1 of the FOIP Act and AMVIR do not allow me to review its decisions as they pertain to individual applicants. The Registrar refers to the wording of section 74.2 of FOIP which states that "the Commissioner may review the Registrar's decision as set out in the notification" as authority for the position that I may only review the information contained in the notification, which in the case of Notification 01/2004, is comprised solely of types of information and categories of persons eligible to receive motor vehicle information.

[para 8] In this instance, one can readily see the difficulties of such an approach. The Applicant has applied for access under sections 2(1)(m) and 5(1)(c) of AMVIR. He was informed by letter that he had been granted access under section 2(1)(p). There was no mention of denial under sections 2(1)(m) or 5(1)(c). Notification 01/2004 does not identify "claim management companies" as a category of persons or organizations that have applied for direct access and have been denied access under sections 2(1)(m) or 5(1)(c), although "claim management companies", as a category, have been denied direct access in the notification pertaining to section 2(1)(a).

[para 9] Perhaps the Applicant may have been categorized as an "agent to the insurance industry" under the section 2(1)(m) categorization of the notification or the "insurance service provider" categorization under section 5(1)(c). However, the Registrar has not stated anywhere that this was the case. In any event, such a categorization would not be entirely appropriate as the Applicant's letter dated April 30, 2004, stated: "Our primary source of business is filing small claims on behalf of individuals, businesses and insurance companies". The Registrar's submission described the Applicant as a "claims manager or independent paralegal". However, neither description is found in the categories denying access under sections 2(1)(m) and 5(1)(c).

[para 10] Thus, if I followed the Registrar's argument that I can only review the information contained in the notification, I would have nothing to review due to its

failure to identify the Applicant by person or category in the notification. In effect, the Registrar's argument, if accepted, would leave the Applicant without any review of the decisions pertaining to sections 2(1)(m) and 5(1)(c). I do not believe the Legislature would have intended such a result without clear language evidencing such an intention.

[para 11] I have already considered the scope of my authority to review decisions of the Registrar in Order M2004-002. In that Order, I concluded that the intent of the Legislature was to have the Registrar consider each application on its own merits and to have the Commissioner review the Registrar's decision on each application.

[para 12] Thus the phrase "the Commissioner may review the Registrar's decision as set out in the notification", when examined in its entire context, must mean the discretionary decisions made by the Registrar in accordance with AMVIR. This is underlined by the order-making authority found in section 74.7 of FOIP wherein I can review an exercise of discretion and send it back for reconsideration. Accordingly, I can review the exercise of the Registrar's discretion as it pertains to individual applicants.

III. ISSUES

[para 13] There are three issues to this inquiry:

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

IV. DISCUSSION OF THE ISSUES

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

[para 14] Section 2(1)(a) of AMVIR states:

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.

[para 15] The Registrar's submission advances two arguments for denying the Applicant access under section 2(1)(a). The first is that the Applicant does not possess the purpose stated in section 2(1)(a). Acting in the capacity of a claims manager, the Applicant acts as an agent and it is only the Applicant's clients themselves that can personally fulfill the requirements of AMVIR. The second argument is that the Applicant has failed to demonstrate how the use of the information requested would ensure responsibility and accountability for an individual's actions with respect to their motor vehicle.

[para 16] In Order M2004-002, I addressed the first argument, 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" includes 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.

[para 17] With regard to the second argument, the Applicant stated that he acts on behalf of consumers and firms in seeking "recovery against parties who are liable in motor vehicle accidents." In Order M2004-003, I found that the use of information to confirm ownership of a vehicle, in order to prepare a claim, is a purpose that falls within section 2(1)(a).

[para 18] I therefore find that the Registrar erred in its interpretation of section 2(1)(a).

[para 19] As stated previously, the Registrar did not give reasons for its decision. However, as was stated in the Registrar's affidavit evidence for the inquiry, a party requesting access to information must fit within the policy model described as the "Third Party Model". Based upon the correspondence with the Applicant, Notification 01/2004 and the Registrar's affidavit evidence, it is evident that the Registrar exercised its discretion, not by considering the Applicant's application on its individual merits, but rather by considering the general qualifications of claims managers as a whole.

[para 20] Since I cannot exercise my discretion in place of the Registrar, and as I have done previously in Orders M2004-002 and M2004-003, I intend to 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.

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

[para 21] 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,

[para 22] The Registrar's submission states that release of information under this section is only available to applicants who are involved in a proceeding before a court or quasi-judicial tribunal and that in the majority of cases the information shall only be released directly to the person involved in the proceedings.

[para 23] The Registrar made identical arguments in reference to section 2(1)(m) in Order M2004-003. In that Order, after reviewing the wording of section 2(1)(m), I found that the Registrar's interpretation was in error. I determined that the section does not require the Applicant to be a party to a proceeding that has already commenced. I also found that the Registrar erred in its interpretation that section 2(1)(m) distinguishes between principals and agents. After reviewing the Registrar's argument and evidence in this instance, the findings I arrived at in Order M2004-003 still stand and apply to the case at hand.

[para 24] Finally, 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). The fact that no description of the Applicant by name or category is found in Notification 01/2004 demonstrates that the Registrar failed to consider the Applicant's application on its individual merits. In coming to this conclusion, I also considered the Registrar's affidavit evidence and its reliance on the "Third Party Model".

[para 25] As I have done with regard to section 2(1)(a), I intend to send this issue back to the Registrar for reconsideration.

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

[para 26] 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 in 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.

[para 27] The Registrar has raised three arguments in this regard. The first is 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's second argument is that the Applicant is not entitled to access the information concerned when acting as an agent for another person. The Registrar's final argument is that the Applicant does not fulfill the requirements of section 5(1)(c), which 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 representatives if that person is killed by a motor vehicle..."

[para 28] Order M2004-003 dealt with the first argument, by finding that Type I information, which consists of ownership, driver, demographic and vehicle information, by its very nature relates to proof of financial responsibility of a person that may ultimately be responsible for a motor vehicle. I also found that, for the purposes of section 5(1)(c), the Registrar should not be considered distinct from the Government of Alberta. The second argument has been refuted, not only in this Order, but in Orders M2004-002 and M2004-003. Section 5(1)(c), like sections 2(1)(a) and 2(1)(m), does not distinguish between principals and agents.

[para 29] However, despite the Registrar's error in the interpretation of this section, I find that the Applicant is not entitled to access to information under section 5(1)(c). There is no evidence before me that the Applicant fulfills the requirements of this section. No evidence has been adduced 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 acting in such a capacity. Accordingly, I confirm the Registrar's decision under section 5(1)(c).

V. REQUIREMENT FOR WRITTEN REASONS

[para 30] In Orders M2004-002 and M2004-003, I found that the duty of procedural fairness required the Registrar to provide the Applicant with written reasons as part of its reconsideration. 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. Therefore, in this instance, I intend to order the Registrar to provide the Applicant with written reasons as part of its reconsideration.

VI. ORDER

[para 31] I make this Order under section 74.7 of the FOIP Act.

[para 32] 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 33] 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 34] 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 35] Pursuant to section 74.7(3) of the Act I require the Registrar to give the Applicant written reasons for its reconsidered decisions.

[para 36] I further order the Registrar to provide me and the Applicant with a copy of the reconsidered decisions within 50 days of receiving a copy of this Order.

Dave Bell
Adjudicator