

OMVIC Policy No.: L2  
**ACCESS and PRIVACY CODE and PRACTICES**  
Approved January 1, 2010 | Reviewed January 1, 2014

## 1. INTRODUCTION

The Ontario Motor Vehicle Industry Council (OMVIC) is the motor vehicle dealer industry's self-management body. OMVIC is a not-for-profit Ontario corporation which operates under the direction of a Board of Directors.

OMVIC is responsible for administering Ontario's *Motor Vehicle Dealers Act, 2002* (MVDA). Our mandate is to maintain a fair, safe and informed marketplace in Ontario by protecting the rights of consumers, enhancing industry professionalism and ensuring fair, honest and open competition for registered motor vehicle dealers. Our adherence to these ideals is reflected in our mission statement:

*We will take pride in the results of our commitment to a fair marketplace, achieved through innovation, enforcement and excellence in service.*

OMVIC came into being on January 7, 1997. On that date, the motor vehicle industry in Ontario -previously regulated by the Ministry of Consumer and Commercial Relations (now the Ministry of Consumer Services) became the first regulated business sector to move to self-management. We became fully operational on April 7.

OMVIC is committed to ensuring that the privacy rights of individuals and organizations are both respected and balanced with OMVIC's role as the industry regulator. Consequently OMVIC has an Access and Privacy Code (Code) that establishes the public's right of access to records and personal information and establishes the rules for the collection, use, disclosure, retention and security of personal information. A copy of this publication is available on request.

The Administrative Agreement between the Minister of Consumer and Business Services and OMVIC contains the terms of the delegation to OMVIC for the administration of the MVDA. Schedule K of the Agreement contains the terms of the Access and Privacy Code that apply to OMVIC records and personal information. The Administrative Agreement, including Schedule K, is available on request.

OMVIC maintains the following categories of records: Registration, Complaints and Adjudication, Investigation and Inspection, Corporate and Legal, Administration and Finance.

## 2. DEFINITIONS

*Collection* - the act of gathering, acquiring, or obtaining personal information from any source including third parties, by any means.

*Consent* - voluntary agreement with what is being done or proposed. Consent can be either express or implied. Express consent is given explicitly, either orally or in writing. Express consent is unequivocal and does not require any inference on the part of the organization seeking consent. Implied consent arises where consent may reasonably be inferred from the action or inaction of the individual.

*Disclosure* – showing, telling, sending or giving personal information to some other individual or organization or the public, but does not include use of the information within OMVIC.

*General information* – any information other than personal information.

*Personal information* - information about an identifiable individual that is recorded in any form.

*Record* - any record of information, however recorded.

*Registrant* - a person applying for registration under the MVDA, persons currently registered and former registrants.

*Use* - refers to the treatment and handling of personal information within an organization.

## 4. PRIVACY PRINCIPLES

### 4.1 Scope and Application

This Code applies to all personal information of registrants of OMVIC and of members of the public who may contact OMVIC or lodge a complaint with OMVIC that is in its custody or under its control.

### 4.2 Accountability

OMVIC is responsible for all personal information set out in Article 4.1.1 that is either in our custody (i.e. possession) or under our control.

OMVIC will designate one or more persons within OMVIC to be responsible for ensuring that we comply with this Code. Other individuals may be delegated to act on behalf of the designated person(s).

OMVIC will publish the title and contact information of the person(s) designated to oversee compliance with this Code.

OMVIC will develop and follow policies and practices that are reasonable for us to meet our obligations under this Code and make information about these policies and practices available to any person upon request.

In carrying out our responsibilities under this Code, we will do what a reasonable person would think was appropriate in the circumstances.

### **4.3 Consenting to the Collection, Use and Disclosure of Personal Information**

Before we collect, use or disclose personal information, we will ask the individual that the information is about to consent to the collection, use and disclosure of the personal information or to consent to the collection of the personal information from someone who is not the individual unless this Code says otherwise.

OMVIC does not need to obtain consent to collect, use or disclose personal information in the specific circumstances set out in Article 4.4.5 (collection without consent), Article 4.5.2 (use without consent) and Article 4.6.2 (disclosure without consent).

OMVIC will not require an individual to consent to the collection, use or disclosure of personal information as a condition of providing a service to the individual unless the collection, use or disclosure is required to carry out a purpose identified in Article 4.4.2.

When an individual applies for registration with OMVIC, this constitutes *implied consent* for us to collect, use and disclose the individual's personal information for the relevant purposes identified in Article 4.4.2.

OMVIC will only use opt-out consent if

- a. we tell individuals what the purposes are for collecting, using or disclosing their personal information;
- b. we notify them at the time of the collection, use or disclosure that they have the option to opt-out;
- c. we give them a reasonable chance to say no to the collection, use or disclosure; and
- d. the information in question is not considered sensitive.

An individual may change or withdraw his or her consent by giving us reasonable notice of this as long as this would not frustrate the administration of the MVDA or change a legal obligation between the individual and us. When we receive such a notice, we will inform the individual of the likely consequences (if any) of changing or withdrawing his or her consent, which may include disentanglement to registration.

OMVIC will obtain consent to the collection, use or disclosure of personal information without giving false or misleading information about the collection, use or disclosure or using deceptive or misleading practices.

OMVIC will use consent clauses that are easy to find and as clearly worded as possible regarding the purposes of collection, use or disclosure.

OMVIC will obtain express consent wherever possible. In determining what form of consent to use, we will take into account the sensitivity of the personal information and the reasonable expectations of our registrants and the public.

#### **4.4 Collecting Personal Information**

OMVIC will only collect personal information for purposes that are reasonable and we will only collect the information that is reasonable for carrying out those purposes.

OMVIC will collect personal information only for the following purposes (referred to in this Code as "identified purposes"):

- a. creating and maintaining records about applications for and obtaining registration as a registrant;
- b. creating and maintaining records about applications for and obtaining a registration and for keeping records about suspended, refused, revoked or reinstated registrations;
- c. creating and maintaining records about registrants fulfilling their continuing education or continuing competence requirements;
- d. creating and maintaining records regarding complaints and their resolution;
- e. lodging, inspecting, investigating and conducting hearings and appeals concerning registrants before various administrative and judicial bodies; and
- f. meeting other legal and regulatory requirements including but not limited to the scrutinizing of potential board members.

OMVIC will notify registrants, prospective registrants or members of the public about the identified purposes before or at the time the personal information is collected and will do this orally, electronically or in writing. We will also let them know who they can contact if they have questions about the collection of their personal information.

OMVIC will only collect personal information directly from the individual the information is about unless the individual consents to the collection of information from another source or the information may be collected without consent under Article 4.4.5.

OMVIC may collect personal information without the consent of the individual only in the following specified circumstances:

- a. when a reasonable person would consider that it is clearly in the interests of the individual and we cannot obtain consent in a timely way or the individual would not reasonably be expected to hold back consent;
- b. when the MVDA, another act or regulation requires or allows for collection without consent;

- c. if the collection is reasonable for the purposes of an inspection, investigation, the enforcement or administration of the MVDA or other legal proceedings;
- d. if we are determining whether an individual is suitable for an honour, award or other similar benefit;
- e. if the information is needed to collect a debt owing to us or for us to repay money owing to the individual;
- f. lodging, inspecting, investigating and conducting hearings and appeals concerning registrants before various administrative and judicial bodies;
- g. if the information is publicly available as defined in PIPEDA;
- h. if the information can be disclosed to us without consent; or
- i. meeting other legal and regulatory requirements including but not limited to the scrutinizing of potential board members.

#### 4.5 Using Personal Information

OMVIC will only use personal information for purposes that are reasonable and we will only use personal information that is reasonable to carry out those purposes.

OMVIC will only use personal information without the individual's consent for the purposes in Article 4.4.5 and for the following additional purposes:

- a. if the information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public;
- b. for the purpose of an inspections or investigation; or
- c. for the administration and enforcement of the MVDA and all applicable legislation including but not limited to the *Business Names Act*, the *Corporations Act*, the *Consumer Protection Act, 2002*, and the *Sale of Goods Act* (as may be amended from time to time).

#### 4.6 Disclosing Personal Information

OMVIC will only disclose personal information for purposes that are reasonable [for the identified purposes in Article 3.3.2] and will only disclose personal information that is reasonable to carry out those purposes.

OMVIC will only disclose personal information without the individual's consent for the purposes in Articles 4.4.5 and 4.5.2 and for the following additional purposes:

- a. when a treaty requires or allows for disclosure without consent and the treaty is made under an act or regulation of Ontario or Canada;
- b. to comply with a subpoena, warrant or order issued by a court or person or body having jurisdiction to compel the production of information or with a rule of court relating to the production of information;
- c. to a government institution, part of a government institution, regulatory body or to a duly designated investigative body (as defined in PIPEDA) or to help in an investigation or a law enforcement proceeding;

- d. to a law enforcement agency within Canada or to another law enforcement agency in a foreign jurisdiction under an arrangement, a written agreement, treaty or legislative authority;
- e. lodging, inspecting, investigating and conducting hearings and appeals concerning registrants before various administrative and judicial bodies;
- f. to the surviving spouse or adult interdependent partner (e.g. a same sex partner) or to a relative of an individual who has died, if in our opinion, the disclosure is reasonable; or
- g. meeting other legal and regulatory requirements including but not limited to the scrutinizing of potential board members.

#### **4.7 Giving Access to and Correcting Personal Information**

OMVIC will provide personal information to the person to whom it relates after receiving a written formal request for same. Upon a formal request, we will give an individual or his or her authorized representative (an "applicant") access to his or her personal information in a record that is in our custody or under our control

OMVIC will require an applicant to give us evidence of his or her identity so we can ensure that the applicant has the right to access the individual's personal information but we will only use such information for the purpose of identification and authentication.

A Director's Certificate may also be requested from OMVIC regarding a registrant, which will contain information regarding registration dates, business premises and registration status.

OMVIC will act reasonably in searching for an applicant's personal information and will respond to an applicant within 30 calendar days from receiving the request, wherever possible.

If OMVIC does not have enough detail to identify the information requested, there is a large amount of information requested or to be searched, meeting the time limit would unreasonably interfere with the operations of OMVIC, or more time is needed to consult with another organization or public body to determine if access can be given. OMVIC will provide written notice that an additional 30 days is required.

OMVIC may charge the following fees for processing the request. In both cases stated in Article 4.7.1 (Registrant History) and Article 4.7.4 (Director's Certificate), OMVIC charges the following fees for the production of the records:

- a. First two hours - \$50.00;
- b. Each additional hour - \$50.00;
- c. Cost if any of retrieving the file(s) from storage;
- d. Photocopying – \$0.75 per page; and
- e. Certified Copies - \$3.00 per page

Registrants and members of the public may seek access to their personal information by contacting OMVIC's Chief Privacy Officer in writing.

OMVIC may refuse access to all or part of an applicant's personal information in the following situations:

- a. the information is protected by section 36 of the MVDA;
- b. the information is protected by any legal privilege;
- c. the disclosure of the information would reveal confidential business information;
- d. the information was collected during an inspection, investigation or for a legal proceeding;
- e. the disclosure of the information might result in that type of information no longer being supplied and it is reasonable that the type of information be supplied;
- f. the information was collected in relation to a complaint by one of OMVIC's complaint representatives; or
- g. the information is subject to solicitor/client privilege.

If OMVIC is reasonably able to sever the information contained in the above exceptions from a requested record, access to the remainder of the information in the record will be provided.

OMVIC will refuse access to all or part of an applicant's personal information in the following situations:

- a. the disclosure of the information could reasonably be expected to threaten the life or security of another individual
- b. the disclosure of the information would impair or disclose the existence of an inspection, investigation, enforcement or legal proceedings under the MVDA or any other Act;
- c. the information would reveal personal information about another individual; or
- d. the information would identify the individual who gave an opinion about another individual and the individual giving the opinion does not consent to the disclosure of his or her identity.

If we are reasonably able to sever the information contained in the above exceptions from a requested record, we will give access to the remainder of the information in the record.

OMVIC will inform the applicant if he or she will be given access to all or part of his or her personal information. If access is to be given, OMVIC will inform the applicant of when access will be given. If access to all or part of the applicant's personal information is refused, OMVIC will inform the applicant of the reason(s) for refusal. OMVIC will also inform the applicant of the name of the person in our organization who can answer questions regarding the refusal.

If an individual believes that his or her personal information in OMVIC's custody or under OMVIC's control has a mistake in it or is missing some information, he or she may request that OMVIC correct the information.

If OMVIC decides that the information should be corrected, it will be done as soon as reasonably possible.

If OMVIC decides not to correct the information, a note will be placed on the individual's personal information indicating that a correction was requested.

OMVIC will not correct or change an opinion, including a professional or expert opinion. OMVIC will make a note on the individual's personal information indicating that a correction was requested.

#### **4.8 Accuracy**

OMVIC will make its best efforts to ensure that personal information used or disclosed by OMVIC or its agents is sufficiently accurate, complete and up-to-date to minimize the possibility that inappropriate information may be used to make a decision about a registrant or applicant.

OMVIC will update personal information about registrants as and when necessary to fulfill the identified purposes or upon notification by the individual.

#### **4.9 Protection**

OMVIC will use reasonable security safeguards to protect personal information against such risks as loss or theft, unauthorized access, disclosure, copying, use, modification or destruction.

OMVIC will protect personal information using physical, administrative and technical safeguards that are appropriate to the sensitivity of the information.

#### **4.10 Retention**

OMVIC will keep personal information only as long as it remains necessary or relevant for the identified purposes or as required by law.

### **5. PROCEDURE FOR HANDLING ACCESS & PRIVACY COMPLAINTS**

An individual who believes that OMVIC has not complied with this Code may make a written complaint about the matter to our organization. OMVIC will use its internal complaint handling procedure to examine and attempt to resolve the matter. The complaint must be in writing and addressed to the Chief Privacy Officer (CPO). The CPO will respond in



writing to the question of compliance with the Code within a reasonable time of the receipt of the complaint.

OMVIC will provide the complainant with a copy of this Code, upon request.

OMVIC may decide not to examine a complaint if:

- a. the complaint relates to an act or practice that is not a possible breach of the privacy of an individual;
- b. the complaint relates to an act or practice that is no longer reasonably able to be investigated because of the length of time since it occurred;
- c. the act or practice relates to an event which occurred prior to the organization being subject to this Code;
- d. the complaint is trivial, frivolous or vexatious; or
- e. the complaint relates to an act or practice that is the subject of court or tribunal proceedings that have commenced or are intended to be commenced.

With the exception of complaints that OMVIC has decided not to investigate as in Article 4.3, OMVIC will investigate and respond to all complaints within a reasonable period of time. If the complaint is found to be justified, OMVIC will take appropriate steps to resolve the complaint including, if necessary, amending our policies and procedures or this Code.

A complainant will be expected to provide full details of how the complaint arose, including the identification of the parties involved, if known, copies of any relevant documentation and reasons why the complainant believes his or her privacy may have been breached.

OMVIC will inform the complainant of the outcome of the investigation regarding his or her complaint.

## **6. MONITORING/REVIEWING THE OPERATION OF THE CODE**

OMVIC will monitor compliance with this Code.

OMVIC's Executive Director will appoint a person to review this Code at regular intervals to ensure that the Code is still serving its stated purposes; that it is being complied with; that the internal complaint handling procedure is still effective; and to determine if there are any amendments that should be made to improve the operation of the Code.

## 7. CONTACT INFORMATION

The individual charged with the responsibility for OMVIC's Access and Privacy Code is the Chief Privacy Officer. The CPO may be contacted at:

Michael Rothe  
Director of Legal Services & Chief Privacy Officer  
Ontario Motor Vehicle Industry Council  
300 – 65 Overlea Blvd.  
Toronto, ON M4H 1P1

Phone: 416-512-3165  
Fax: 416-512-3758  
Toll Free: 1-800-943-6002 ext. 3165  
E-mail: [privacy@omvic.on.ca](mailto:privacy@omvic.on.ca)