



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE CONDUCT AND PROGRESS OF THE OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"

5 February 2015

D15/02868

The Hon Mike Baird MP  
Premier  
GPO BOX 5341  
SYDNEY NSW 2001

Dear Premier

**Request for documents sought under SO 52 and SO 53 re Operation Mascot and Report of Police Strike Force Emblems**

As you are aware, the Legislative Council late last year resolved to seek documents relating to Operation Mascot and the Report of Police Strike Force Emblems. On 20 November 2014 the House made an order under Standing Order 52 for the report of Strike Force Emblems and various attachments and recommendations related to the Report. This was declined in correspondence dated 4 December 2014 from the General Counsel to the Department of Premier and Cabinet, on the basis of advice from the Crown Solicitor that the Emblems report is a document "concerning the administration of justice" and should be sought by way of an address to the Governor pursuant to Standing Order 53.

Also on 20 November 2014, the House sought under Standing Order 53 by way of an Address to the Governor a number of specific documents relating to warrants, affidavits and other court documents between 4 April 2000 and 14 September 2000. On 3 December 2014 the President received a message from His Excellency the Honourable David Hurley AC DSC, declining to produce the documents on advice from Executive Council.

Subsequently the Committee has during the inquiry received the Report of Strike Force Emblems, warrant 266/2000 dated 14 September 2000, the supporting affidavit dated 14 September and warrant 95/2000 dated 4 April 2014. Much of the evidence of the inquiry has focussed on the two warrants and the basis on which they were made. Without the accompanying transcripts of evidence of the applications made in April and September before Justices Dowd and Bell, and the accompanying affidavits and the judgements, the Committee will have an incomplete basis on which to reach conclusions on the central aspects of its inquiry.

The Committee has therefore resolved that I request that the Executive Council consider its previous advice to the Governor in light of the evidence received to date by the Committee, and lodge with the Clerk the documents sought by the House under Standing Order 53 on 20 November 2014 (copy of resolution attached). The Committee has a reporting date of 25 February 2015.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Borsak', is written over a light grey rectangular background.

Hon Robert Borsak MLC  
**Committee Chair**

**4 ADDRESS TO THE GOVERNOR—PAPERS RELATING TO THE ADMINISTRATION OF JUSTICE (Formal Business)**

Mr Borsak moved, according to notice:

1. That, under standing order 53, an Address be presented to the Governor requesting that His Excellency may be pleased to cause to be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents in relation to the administration of justice:
  - (a) the warrant and judgment issued by then Justice Bell of the NSW Supreme Court under section 16 of the Listening Devices Act 1984 on 14 September 2000,
  - (b) all affidavit material, applications and submissions provided to Justice Bell in support of the application for a warrant under section 16 of the Listening Devices Act 1984 on 14 September 2000,
  - (c) all transcripts of evidence of an application made before Justice Bell under section 16 of the Listening Devices Act 1984 on 14 September 2000,
  - (d) Warrant 266/2000, dated 14 September, issued by Justice Bell,
  - (e) the warrant and judgment issued by then Justice Dowd of the NSW Supreme Court under section 16 of the Listening Devices Act 1984 on 4 April 2000,
  - (f) all affidavit material, applications and submissions provided to Justice Dowd in support of the application for a warrant under section 16 of the Listening Devices Act 1984 on 4 April 2000,
  - (g) all transcripts of evidence of an application made before Justice Dowd under section 16 of the Listening Devices Act 1984 on 4 April 2000,
  - (h) Warrant 95/2000, dated 4 April 2000, issued by Justice Dowd, and
  - (i) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
2. That notwithstanding anything to the contrary in standing order 53, a return to this order having been received by the Clerk, any documents over which privilege is not claimed will:
  - (a) subject to (b) below, remain confidential and available for inspection by members of the House only, and
  - (b) stand referred to the Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect", which is authorised to determine whether the documents should subsequently be made public.

Question put and passed.

**21 ORDER FOR PAPERS—REPORT OF POLICE STRIKE FORCE EMBLEMS**

Mr Borsak moved, according to notice:

1. That, under standing order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents in the possession, custody or control of the Department of Premier and Cabinet or the NSW Police:
  - (a) the report of Police Strike Force Emblems,
  - (b) the attachments numbered 1 – 15 of the report of Police Strike Force Emblems,
  - (c) the recommendations of Police Strike Force Emblems, and
  - (d) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
2. That documents returned to this order for papers be redacted to remove the names of police informants, under cover police officers and protected witnesses.
3. That notwithstanding anything to the contrary in standing order 52, a return to this order having been received by the Clerk, any documents over which privilege is not claimed will:
  - (a) subject to (b) below, remain confidential and available for inspection by members of the House only, and
  - (b) stand referred to the Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect", which is authorised to determine whether the documents should subsequently be made public.

Debate ensued.

Mr Blair moved: That the motion be amended by inserting after "to remove the names".in paragraph 2 the words ", and any information that would reveal or tend to reveal the identity,".

Debate continued.

Question: That the amendment of Mr Blair be agreed to—put and passed.

Original question, as amended put:

1. That, under standing order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents in the possession, custody or control of the Department of Premier and Cabinet or the NSW Police:
  - (a) the report of Police Strike Force Emblems,
  - (b) the attachments numbered 1 – 15 of the report of Police Strike Force Emblems,
  - (c) the recommendations of Police Strike Force Emblems, and
  - (d) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
2. That documents returned to this order for papers be redacted to remove the names, and any information that would reveal or tend to reveal the identity, of police informants, under cover police officers and protected witnesses.

3. That notwithstanding anything to the contrary in standing order 52, a return to this order having been received by the Clerk, any documents over which privilege is not claimed will:
- (a) subject to (b) below, remain confidential and available for inspection by members of the House only, and
  - (b) stand referred to the Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect", which is authorised to determine whether the documents should subsequently be made public.

The House divided.

Ayes 19

Ms Barham	Mr Foley	Mr Shoebridge
Mr Borsak	Mr Green	Mr Veitch *
Mr Brown	Dr Kaye	Ms Voltz
Mr Buckingham	Revd Mr Nile	Ms Westwood *
Ms Cotsis	Mr Primrose	Mr Whan
Mr Donnelly	Mr Searle	
Dr Faruqi	Ms Sharpe	* Tellers

Noes 14

Mr Ajaka	Mr Gallacher	Mrs Maclaren-Jones
Mr Blair	Miss Gardiner	Mrs Mitchell
Mr Clarke	Mr Gay	Mr Pearce
Mr Colless *	Mr Khan	Dr Phelps *
Ms Ficarra	Mr MacDonald	
		* Tellers

Pairs

Ms Fazio	Ms Cusack
Mr Moselmane	Mrs Pavey
Mr Secord	Mr Lynn
Mr Wong	Mr Mason-Cox

Question resolved in the affirmative.