

Your ref -
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Date
23 February 2015

Select Committee on the Conduct and Progress of the
Ombudsman's Inquiry 'Operation Prospect'
Parliament of New South Wales
Parliament House
Macquarie Street
SYDNEY NSW 2000

Attention: Ms Beverly Duffy
Clerk Assistant Committees

BY EMAIL: OperationProspect@parliament.nsw.gov.au

Dear Ms Duffy

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

- 1 We refer to the report of the Select Committee proposed to be released publicly on 25 February 2015.
- 2 Prior to the finalisation and release of that report, we wish to make a final submission on behalf of Deputy Commissioner Catherine Burn.
- 3 The Terms of Reference of the Select Committee relate specifically to the conduct and progress of the Ombudsman's Inquiry known as 'Operation Prospect'.
- 4 We assume that the Ombudsman will proceed to deliver his findings based on all the evidence available to him. Much of this evidence is subject to statutory secrecy provisions. The Committee does not have access to that evidence and could not reasonably make findings as to the truth of a range of matters without access to it.
- 5 We therefore urge the Committee to exercise restraint and responsibility in finalising its report with the knowledge that the Ombudsman has advised the Government that his report will be delivered within the first half of this year.
- 6 The Committee's Inquiry has examined three areas of public concern relating to allegations of abuse of power - by the police, by agencies overseeing the police, and by the Ombudsman.

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- 7 So far as Deputy Commissioner Burn is concerned, her conduct relates only to the first area, namely the surveillance operation carried out by the Special Crime Unit of the Special Crime and Internal Affairs Command, in relation to what is known as Operation Mascot.
- 8 We emphasise that the alleged abuse of power by the oversight agencies and by the Ombudsman cannot and do not involve her.
- 9 As is now clear, there were a number of persons involved in the management of Operation Mascot. The Operation Committee comprised a number of senior members of the NSW Crime Commission and the NSW Police Force (and after June 2000 members of the Police Integrity Commission). It met on a weekly basis over a period of 2 to 3 years from the initial debriefing of M5. The roles and responsibilities of those in the Operation Committee are not easily or well understood because of the statutory secrecy provisions and the lack of availability of the documents evidencing the conduct of the Operation Committee. There should not be any rush to judgment about the alleged abuse of power in relation to the surveillance conducted by SCIA in Operation Mascot without full access to those documents. At the least, Deputy Commissioner Burn has placed on the record that she herself acted honestly with respect to her role and responsibilities during that time.
- 10 False and defamatory accusations have been made against Ms Burn before and during this Inquiry and we wish to set the record straight so the public can understand the position. The fact that those accusations were made without the documents the subject of statutory secrecy provisions being fully available is highly regrettable and prejudicial:
- (a) It has been falsely alleged that Deputy Commissioner Burn authorised the use of false affidavits to seek warrants against police officers not named in the affidavits. She has made it clear that it was not her role or responsibility to prepare the affidavits or review the warrants before the courts. This was the role and responsibility of the deponent of the affidavits, who were sergeants or senior sergeants of the NSW Police Force, the Assistant Director of the NSW Crime Commission and the solicitors from the NSW Crime Commission who presented the affidavits to the courts. Mr Giorgiutti confirmed in his evidence that the responsibility for the preparation of the affidavits was that of the Crime Commission Solicitor (Transcript p18, 4.2.15). In relation to the warrant in question, LD266, the particular solicitor concerned was Mr Neil Owen, who so far as we are aware, has not been called to be examined by the Committee. However, the fundamental point needs to be made that if there was a motive, such as a personal vendetta by the police officers concerned in presenting false affidavits to the courts, then Mr Owen and other Crime Commission Solicitors would have had to be complicit with that conduct, which is untrue.

- (b) It has been falsely alleged that Deputy Commissioner Burn personally briefed the Commissioner of Police, Mr Peter Ryan, for the purposes of an interview with 60 Minutes in April 2002 about the reason for the number of police names contained on the warrant LD266. Deputy Commissioner Burn has made it clear that she did not in fact communicate with Mr Ryan on 13 April 2002 prior to him giving that interview, which according to the examination of Mr Steve Barrett occurred at 2 pm on 13 April 2002, or at any other time that day. Deputy Commissioner Burn did not start work until 4.45 pm that afternoon. The Committee did not examine Mr Ryan, so far as we are aware, to confirm who did brief him for that purpose.
- (c) It has been falsely alleged that Deputy Commissioner Burn did not have a reasonable suspicion that Mr Kaldas had committed any crimes when applications were made for LD's relating to him. Ms Burn has made it clear that she had a reasonable suspicion based on the investigation which had been conducted prior to Operation Mascot known as Taskforce Ancrum. She has also made it clear that that suspicion was increased when certain targeted police officers (including two who later admitted that they were corrupt police) became aware of M5's covert activity, as a result of a conversation between Mr Kaldas and another targeted police officer. A conversation with that targeted police officer was recorded under surveillance by M5, and then subsequently a conversation between M5 and Mr Kaldas was recorded under surveillance confirming that Mr Kaldas had had the conversation with that targeted police officer. If there is any challenge to Ms Burns' honesty that she had such reasonable suspicion, it would be necessary to examine many documents, including the transcripts of those particular conversations to understand exactly the reasons for the suspicion that she held at that time. The Committee does not have those records.
- (d) In the last public hearing of this Committee, Mr Kaldas claimed that Ms Burn had suggested his name to M5 in the initial debrief and that his name was not raised by M5 as being suspected of any crime. Firstly, without the benefit of the full transcript of the debriefing, the Committee should not accept such evidence which cannot be tested or verified with any accuracy. However, to the extent that M5 raised other police officers' names in that debrief concerning matters investigated by Taskforce Ancrum, which also involved Mr Kaldas, then it would reasonably follow that Mr Kaldas' name would be raised with M5 in the context of that discussion.

11 A number of witnesses have claimed to have been justified in disclosing documents and information, the subject of statutory secrecy provisions including the conduct of the Ombudsman's Inquiry, to the media or others prior to the Committee's Inquiry. Whether those persons were justified in

doing so, and therefore excused from committing a criminal offence, is a matter to be determined. Ms Burn has honestly and faithfully observed those statutory secrecy provisions, much to her detriment in view of the false accusations made. Those accusations were made without an examination of many relevant documents and an understanding of the complexity of a surveillance operation such as Operation Mascot. Given the seniority of the members of the NSW Crime Commission and the NSW Police Force involved in Operation Mascot, it was a particularly serious investigation and involved great danger to M5 and others.

- 12 The only person with access to the full extent of information available concerning Operation Mascot is the Ombudsman. The Government must trust that he will honestly and faithfully exercise his powers which the Government specifically gave him.
- 13 We request that this submission be placed on the Committee's website for the information of the public, prior to or at the same time the Committee releases its report.

Yours sincerely

Patrick George
Senior Partner