

**INQUIRY INTO THE CONDUCT AND PROGRESS OF THE
OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"**

Name: Ms Catherine Burn

Date received: 9/01/2015



NSW Police Force

**DEPUTY COMMISSIONER
Specialist Operations**

By email: operationprospect@parliament.nsw.gov.au

The Director
The Conduct & Progress of 'Operation Prospect'
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Director,

RE: SELECT COMMITTEE INQUIRY

- 1 I refer to your letter dated 2 December 2014.
- 2 I note the Terms of Reference of the Select Committee Inquiry into the conduct and progress of the Ombudsman's Inquiry, and the invitation from the Chairman, the Honourable Robert Borsak, to make a submission to the Select Committee Inquiry.
- 3 I confirm that I am aware of the Ombudsman's Inquiry known as Operation Prospect, but I am uncertain as to the validity of the Select Committee powers to override secrecy provisions in various Acts of Parliament and specific non-disclosure directions by the Ombudsman relating to Operation Prospect and I do not propose to say anything further about the Ombudsman's Inquiry or the matters the subject to the Ombudsman's Inquiry pending further clarification.
- 4 Having regard to the Select Committee's Terms of Reference and, specifically, paragraph 1(c) and its reference to Operation Mascot, I seek clarification as to what issues arise in relation to that Operation in the Select Committee's Inquiry. To the extent that such issues do arise, it will be necessary for relevant documents, also the subject of statutory secrecy provisions, to be made available to me to refresh my memory so I can assist the Select Committee to the extent possible. You will be aware that Operation Mascot commenced 15 years ago and I have been involved in many operations and operational duties since then.
- 5 If the Select Committee intends to consider any allegations about my conduct, I request specific notice of what that conduct is alleged to be and what the allegations are.



6 I am aware of media discussion about the Select Committee's Inquiry and the possible release of the Report of Strike Force Emblems ('Emblems Report') which I understand remains subject to statutory secrecy provisions. I have not seen the Emblems Report, but I did receive a copy of a letter from the Inspector of the Police Integrity Commission to the Minister for Police and Emergency Services dated 23 November 2012, a copy of which is enclosed. The Inspector (who had read the Emblems Report) seriously criticises the Emblems Report and recommended that it not be made public. In such circumstances, the credibility of that Report must be very low.

7 Importantly, the Inspector found that the Report was, 'severely wanting in sound reasoning and logical exposition of investigations said to have been undertaken'. He also said, 'There is a grave risk to the reputation of not only the NSW Police as an Institution but also of many named persons by false perceptions flowing from publication as well as inevitable speculations which would be fruitless as they would be dangerous.'

8 I am also concerned about statements appearing in the media concerning the Select Committee's Inquiry. Some observers might think that those statements indicate pre-judgment on the part of some members of the Select Committee and a desire to come to a conclusion that has already been decided as well as partiality in relation to the witnesses. Those statements, in my view, were made on incomplete and inaccurate information concerning the activities of persons involved in Operation Mascot, perhaps influenced by the Emblems Report, but in any event, without reference to the Operation Mascot documents.

9 In view of irresponsible media reporting in the past, I wish to make it clear that any suggestions to the following effect are absolutely untrue, and:

(a) I deny that as Team Leader of Operation Mascot, I directed Special Crimes and Internal Affairs ('Internal Affairs') police to falsify evidence presented to a Supreme Court Judge in order to obtain warrants to secretly record conversations of NSW police and others who were under no suspicion of committing an indictable offence which would legitimise the granting of the warrant.

(b) I deny that as Team Leader of Operation Mascot, I knew that Internal Affairs police intended to fraudulently misrepresent that innocent police were suspected of committing indictable offences in affidavits which were used in the Supreme Court to obtain warrants to secretly record their conversations.

(c) I deny that as Team Leader of Operation Mascot, I directed Internal Affairs police to use illegal warrants to secretly record conversations of my rivals in the police force and in particular Deputy Commissioner Nick Kaldas when I had no suspicion that he had committed an indictable offence.

(d) I deny that as Team Leader of Operation Mascot, I directed the use of illegal warrants as part of a personal vendetta towards Deputy Commissioner Nick Kaldas to secretly record his conversations when I had no suspicion that he had committed an indictable offence.

(e) I deny that as Team Leader of Operation Mascot, I directed the illegal issuing of warrants against persons whose names had not appeared in affidavits filed with the Supreme Court to authorise the warrants.

(f) I deny that I dishonestly covered up the use of illegal warrants to secretly record conversations of innocent police and others when I was Team Leader of Operation Mascot at the Internal Affairs unit.

(g) I deny that as Deputy Commissioner of Police I am hiding behind secrecy laws to conceal my unlawful conduct in directing the use of illegal warrants to secretly record conversations of innocent police and others when I was Team Leader of Operation Mascot.

10 I am legally represented by Bruce McClintock SC and Patrick George and will seek the Select Committee's leave to be represented if I am required to attend its Inquiry into the Ombudsman's Inquiry.

Yours sincerely

~~Catherine Burn~~
~~Deputy Commissioner of Police~~
~~Specialist Operations~~

7-1-15



**Inspector
of the
Police Integrity Commission**

Our Ref: G10 2012 37

23 November 2012

The Hon Michael Gallacher MLC
Leader of the Government in the Legislative Council
Minister for Police and Emergency Services
Minister for the Hunter
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

Re: Strike Force Emblems

I refer to your letter of 11 May 2012 and to the letter from the Hon the Premier of 25 May 2012.

I have the honour to enclose my Report and Review sought by you pursuant to s.217 of the *Police Act 1990*.

The report of Strike Force Emblems I have found to be such an abstruse and unsatisfactory internal police document that it is not in the public interest for it, its findings (such as they are) and its recommendations (such as they are) to be made public.

With the utmost respect to those involved in the preparation of the Strike Force Emblems Report it is severely wanting in sound reasoning and logical exposition of investigations said to have been undertaken. Its findings and recommendations on my reading of accompanying internal police communications do not enjoy support or confidence among police commentators of high rank.

There is a grave risk to the reputation of not only the NSW Police as an institution but also of many named persons by false perceptions flowing from publication as well as inevitable speculations which would be fruitless as they would be dangerous.

Encl

Inspector of the Police Integrity Commission
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My Report and Review amplifies these matters. However I can state in this letter to you that the public interest would be ill served by the release of the Strike Force Emblems Report and my critique of it.

I acknowledge that the subject NSWCC LD Warrant 266 of 2000 by naming so many people and by correlation of those names with references to them or the absence of references to them in the supporting affidavit could understandably give rise to concern. I did not consider, and do not consider, it part of my function under S.217 of the *Police Act NSW 1990* in accordance with your letter to pursue any question of suspected or perceived criminal misconduct or the motivation if any therefor in the application for the warrant in the form it was made. I make no finding in that regard.

The reference of all the matters that have evolved since 11 May 2012 by direction of myself under the *Police Integrity Commission Act 1996* and pursuant to the schedule to the *Ombudsman Act 1974* to the Office of the Ombudsman is sensible, prudent and the most effective mechanism for the protection of the interests and privacy of those involved in an affair that originated in the last decade of the last century.

This is not a question of the avoidance of public scrutiny but rather of the operation of a transcending public interest in the fair and considered protection of the good name of the NSW Police, of those who serve in it and of other members of the community.

The reality has to be acknowledged that it is unfortunate that so much time has elapsed and that these issues are still the subject of concern to members of the police and others and are subject to what I consider to have been often the unfair agitation of issues in the media in circumstances where the source of the material for that agitation can only be found in the criminal misconduct of someone at some time.

Finality and closure will be the best outcome in the interests of the public and of the Police Force of this State which the Police has the privilege to serve.

To revert to the four matters raised in your letter to me of 11 May 2012 I state: first, that it cannot be assured that the recommendations have been properly dealt with. This flows from the view I have formed as to the quality of the recommendations and the views expressed by others in internal commentaries. Secondly, it would not be in the public interest, as I have said, that the report be released involving the recommendations and the subsequent commentary material provided to me by the Police Department and the want of confidence in the recommendations which that material, as it appears to me, discloses. Thirdly, the public release would clearly prejudice the fair and proper investigations now to be conducted by the Ombudsman in whose hands all aspects of the matter presently rest. Fourthly, the release of the report and my commentary upon it could unreasonably reflect upon individuals without affording them natural justice as that term is generally understood. That opportunity, even though some of the material points to people having been given a chance to give their account by, for example, recorded interview or statement, will now best be provided for by the Ombudsman's inquiry.

For the reasons stated I advise against the publication of the Strike Force Emblems Report and my Report and Review of it, other than to yourself, the Hon the Premier, Commissioner A. Scipione and Mr Bruce Barbour, Ombudsman.

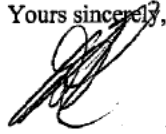
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I have no objection to the release to the public of this letter.

Yours sincerely,



The Hon David Levine AO RFD QC
Inspector: PIC

Cc The Hon the Premier, Barry O'Farrell
NSW Police Commissioner, Andrew Scipione
NSW Ombudsman, Bruce Barbour

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