

**Submission
No 2**

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

Name: Mr Ken Desmond

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**SUBMISSION TO SELECT COMMITTEE ON THE CONDUCT AND PROGRESS
OF THE OMBUDSMAN'S INQUIRY 'OPERATION PROSPECT'.**

This is a written submission to the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry titled '*Operation Prospect*'. The submission is made on the basis of an interested party as my name appears on two (2) known listening device warrants issued under the provisions of section 16 of the *Listening Devices Act 1984 (NSW)* (*warrants*), subject of an investigation by Operation Prospect.

BACKGROUND

I am a former Detective Sergeant of the NSW Police Force and was medically discharged from the NSW Police Force in August 2000. During my term as a Police officer I was never attached to or had any associations or links with Northern Area Command which is referenced as Task Force '*Mascot*' and or Task Force Magnum which is referenced as '*Mascot II*'. Both these task forces are the scope of matters under investigation by Operation Prospect.

Over an extended period of time I have endeavored with a number of NSW statutory authorities, including the NSW Police Force (*excluding task force Emblems*) and the Ombudsman Office to have my allegation investigated. The allegation related to the warrants referencing my name as being falsely sworn out before a Justice of the Supreme Court of NSW, in that, the applicant provided false and misleading information in an affidavit in seeking the warrants. This allegation was never acted upon.

It is interesting to note, that one of the warrants was issued on 5 October 2000, which is a date after I was discharged from the Police Force, so therefore I was not a serving Police officer, so this in itself raises grave concerns, notwithstanding other relevant factors, as to the grounds relied upon to secure the warrants.

OPERATION PROSPECT

On 4 May 2013, as a result of a newspaper article, I invited the Operation Prospect to re-consider the contents of my letter to the Ombudsman, dated 7 June 2005 concerning this allegation and also consider the information I provided to Task Force Emblems.

By way of letter dated, 9 May 2013, Operation Prospect advised me that my allegation concerning the warrants fell within the scope of the matters which will be investigated as part of Operation Prospect and therefore, it was my understanding, I was a complainant in this investigation.

Concerns

In considering this serious allegation would be properly and adequately investigated by Operation Prospect, one would, at least, be expected to be interviewed to test the validity or otherwise of the sworn information contained in the affidavits and or other information placed before the Justice (s) of the Supreme Court of NSW in securing these warrants.

Furthermore, one would also be expected to be provided with all the relevant information, subject of the investigation, so as a complainant I was given the opportunity of providing relevant evidence to the investigation.

I am still unaware what information concerning me is contained in the sworn affidavit or any other material relied upon in securing the warrants from the Supreme Court of NSW. However, whatever is contained or relied upon in any of these documents / records in relation to me would be false and misleading.

As indicated the warrants were part of task force investigations, however these task forces were not directed at me, and the evidence, in my view, will show the reason my name appears on the warrants is from information sourced either legally or illegally from the Police Integrity Commission on unrelated historical matters.

It should be noted in a stated case of the High Court of Australia it was held that suspicion is not sufficient in seeking warrants so therefore the applicant has to reach the high standard of reasonable grounds in seeking a warrant of this nature.

The only intervention Operation Prospect has had in dealing with me was to seek the copies of the two warrants in my possession.

Requests were made to Operation Prospect for me be interviewed over the allegation, however these requests were rejected on the basis of the provisions of section 34 of the *Ombudsman Act 1974* surrounding the investigation process. This fact does not make sense and is abstruse as in any proper investigation process all available evidence / information should be to hand to arrive at an accurate, proper and conclusive conclusion and finding of that evidence. In the absence of any or all the evidence / information how can any conclusion and findings be an accurate account of the evidence. As indicated I made myself available to be interviewed over the allegation in any form required by Operation Prospect.

In the above circumstances, I advised Operation Prospect that they had left me with no other option, but to await the outcome of their report, and then consider what options were available to advance the matter.

It appears that Operation Prospect is only concerned in certain elements of the evidence, namely the persons who swore out the warrants and ensuring in protecting their identity, their interest and welfare notwithstanding their names appear on the two known warrants which are on the public record. In these circumstances, no other conclusion can be drawn only to say that Operation Prospect has no consideration or respect for any evidence that can be provided by me as a complainant.

It also appears from the investigation process of Operation Prospect there is no consideration for the welfare of a person who has been subjected to this allegation for more than a decade, only to ensure the welfare, interest and well being of the offending party.

Secrecy

I am still unaware as to the total number of warrant (s) that my names appears or any other information dealing with any other matter concerning me that Operation Prospect is investigating.

To put in plainly, I am in the dark and confused as a complainant in this investigation process, notwithstanding that Operation Prospect has on a several of occasions given general information on the investigation progress, but has not advised me directly on the progress of my specific allegations.

The last communication from Operation Prospect was to the effect the investigation will be completed in December 2014 and the report will be finalised in first part of 2015. Therefore, Operation Prospect still considered that my evidence had not weight or value, suggesting they only intended to obtain evidence from the offending party and not obtaining all relevant evidence.

Comment

The public has to have confidence and trust in an investigation of this nature, in that, such an investigation would be undertaken in obtaining all the relevant evidence to be carefully considered in reaching a finding and conclusion on that evidence.

At the end day, this inquiry should have been in the public arena whereby all the facts could be aired in the public domain and not surrounded in secrecy therefore providing a public perception of a cover up or a suspicion as to the probity of the investigation.

If the Committee requires me to provide oral evidence on these or other matters, I am willing to attend. Also there are no concerns of this submission being published, if the Committee so desires.