



Premier & Cabinet

Ref: A5374796

Mr David Blunt
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Blunt

Order for Papers – FriendlyJordies

I refer to the above resolution of the Legislative Council under Standing Order 52 made on 23 March 2022 and your correspondence of the same date.

I am now delivering to you documents referred to in that resolution. The documents have been obtained from:

- Office of the Deputy Premier, Minister for Regional New South Wales, and Minister for Police
- Department of Regional NSW
- Department of Premier and Cabinet (DPC).

Enclosed at **Annexure 1** are certification letters from officers of the following Ministerial offices and agencies certifying that, to the best of their knowledge, either all documents held and covered by the terms of the resolution and lawfully required to be provided have been provided or that no documents are held:

- Office of the Deputy Premier, Minister for Regional New South Wales, and Minister for Police
- Attorney General's Office
- Office of the Minister for Transport and Minister for Veterans
- Department of Communities and Justice
- Department of Regional NSW.

Also attached at **Annexure 1** is an advice from the Crown Solicitor obtained jointly by NSW Police and DPC on the application of Standing Order 53 to certain categories of responsive documents held by each agency that relate to the administration of justice. The advice is provided by both agencies on a voluntarily basis.

DPC has provided a partial return and is conducting further searches. Any further documents responsive to the order and lawfully required to be provided will be returned as soon as possible. I am also advised that NSW Police are still reviewing and collating documents and will provide any responsive documents held as soon as possible.

The State Archives and Records Authority has also advised that it has been unable to provide a return by the due date and confirmed that a return will be provided as soon as possible.

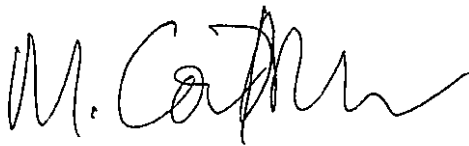
Enclosed at **Annexure 2** is an index of the non-privileged documents that have been provided in response to the resolution.

In accordance with Item 5(a) of Standing Order 52, those documents for which a claim for privilege has been made have been separately indexed and the case for privilege has been noted. Enclosed at **Annexure 3** are indexes of all privileged documents and submission in support of the case for privilege.

I note that submissions in support of a claim of privilege may sometimes reveal information that is privileged. To the extent that they do, such submissions should be considered to be subject to the same confidentiality as the documents over which the privilege claim is made.

Should you require any clarification or further assistance, please contact the Legal Branch of the Department of Premier and Cabinet.

Yours sincerely

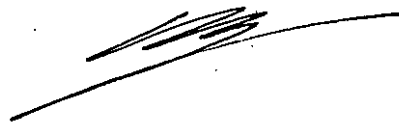


Michael Coutts-Trotter
Secretary

14 April 2022

Received a brief of the Clerk of
the Parliament at 3.10 pm on a
Thursday 14 April 2022

3 boxes non-privileged
2 boxes privileged





The Hon. Paul Toole MP
Deputy Premier
Minister for Regional New South Wales
Minister for Police

OFFICIAL

11 April 2022

Mr Matt Richards
Executive Director, Legal
Office of General Counsel
Department of Premier and Cabinet
Level 14, 52 Martin Place
SYDNEY NSW 2000

Order for papers – Friendlyjordies

Dear Mr Richards,

I write in response to the memorandum received from General Counsel on 28 March 2022 relating to Standing Order 52 – Order for Papers – Friendlyjordies.

I certify to the best of my knowledge all documents held by the Office of the Deputy Premier, Minister for Regional New South Wales, Minister for Police that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Becking', with a stylized flourish at the end.

Stuart Becking
A/Chief of Staff
Office of Paul Toole MP
Deputy Premier
Minister for Regional NSW
Minister for Police

OFFICIAL



Wednesday 6 April 2022

Mr Mark Hare
Executive Director, Legal
Legal Branch, Office of General Counsel
Department of Premier and Cabinet
Level 14, 52 Martin Place
SYDNEY NSW 2000

Dear Mr Hare,

Standing Order 52 – Order for Papers – FriendlyJordies

I certify to the best of my knowledge that no documents covered by the terms of the resolution and lawfully required to be provided, are held by the Office of Mark Speakman, Attorney General.

I note the Department of Communities and Justice was also subject to the order.

It is also noted that this office was only subject to category (a) within the order. We have interpreted this category to seek production of agency or ministerial documents that relate to the matters raised therein. As such, where our searches have revealed media articles or correspondence from members of the public, those documents have not been included in our response.

Yours sincerely

Cheryl Gwilliam

Chief of Staff to the Attorney General Mark Speakman



The Hon. David Elliott MP
Minister for Transport
Minister for Veterans

OFFICIAL

Mr Mark Hare
Executive Director, Legal
Office of General Counsel
Department of Premier and Cabinet
Level 14, 52 Martin Place
SYDNEY NSW 2000

Re: SO52 – Friendly Jordies

Dear Mr Hare

I certify to the best of my knowledge that no documents covered by the terms of the resolution and lawfully required to be provided are held by the Office of the Minister for Transport and Veterans.

Yours Sincerely

Rommel Varghese for

Tanya Raffoul
Chief of Staff
Minister for Transport and Veterans

6 April 2022

OFFICIAL



Ref: AF22/1636#001

6 April 2022

Mr Mark Hare
Executive Director, Legal
Office of General Counsel
Department of Premier and Cabinet
Level 14, 52 Martin Place
SYDNEY NSW 2000

Dear Mr Hare

Standing Order 52 – Order for Papers – FriendlyJordies

I refer to the letter dated 23 March 2022, addressed to the former Secretary of the Department of Communities and Justice advising of the resolution of the Legislative Council of 23 March 2022 (the **resolution**), seeking documents as detailed and relating to the FriendlyJordies, Jordan Shanks, Kristo Langer.

The Department of Communities and Justice (the **Department**) holds no documents caught by paragraphs (a)-(c) of the resolution.

I certify to the best of my knowledge that no documents covered by the terms of the resolution and lawfully required to be provided are held by the Department.

The time taken to respond to this Order by the Department has been estimated at 1 hour, at an approximate cost of \$100 as per the **enclosed**.

Should you have any queries, please do not hesitate to contact Lida Kaban, General Counsel, on (02) 8346 1024 or by email at lida.kaban@justice.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Tidball', with a horizontal line drawn underneath.

Michael Tidball
Secretary

Encl: Time and costs

Mr Mark Hare
Executive Director, Legal
Office of General Counsel
Department of Premier and Cabinet
Level 14, 52 Martin Place
SYDNEY NSW 2000

8 April 2022

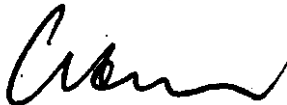
Dear Mr Hare,

Standing Order 52 Resolution – Order for Papers – FriendlyJordies (1720)

I refer to the above resolution passed by the Legislative Council on 23 March 2022.

I certify to the best of my knowledge that all documents held by the Department of Regional NSW, that are covered by the terms of the resolution and are lawfully required to be provided, have been provided.

Yours sincerely,



Gary Barnes
Secretary

Encl. Index non-privileged documents
 Documents are delivered to DPC directly

APPLICATION OF SO53 TO DOCUMENTS SOUGHT UNDER SO52 RESOLUTION
CALLING FOR 'FRIENDLYJORDIES' DOCUMENTS**Executive summary**

1. You seek my urgent advice as to whether NSW Police or the Department of Premier and Cabinet ("DPC") must produce documents pursuant to a resolution of 23 March 2022 containing an order for papers (the "Order") under Standing Order 52 ("SO 52") in light of the possible application of Standing Order 53 ("SO 53"). Broadly speaking, the documents sought relate to the FriendlyJordies, Jordan Shanks and Kristo Langker.
2. In preparing this advice I have not reviewed the documents in the possession, custody or control of NSW Police or DPC which are potentially responsive to the Order. I have had regard to the terms of the Order and the description of the categories of documents in your instructions (see [7] and [9] below).
3. The production of documents concerning the administration of justice is to be sought by an Address to the Governor under SO 53, rather than sought from the Executive under SO 52.
4. For the documents held by NSW Police which are potentially responsive to the Order:
 - (a) The documents in categories 1-3 on p. 2 of your instructions, which relate to investigations of allegations that Mr Shanks and Mr Langker committed certain offences, *may* concern the administration of justice if they contain material sufficiently related to court proceedings, including prospective proceedings.
 - (b) The documents in category 4, which are described as "relating to the arrest and charging of Kristo Langker", would *prima facie* concern the administration of justice for the purposes of SO 53. This is consistent with my recent advice to NSW Police about documents relating to the arrest, charge and detention of Luke Moore ("the Luke Moore advice").¹
 - (c) The documents in category 5 relate to a suppression or non-publication order, which is an order by a court in respect of particular proceedings. An application for such an order would ordinarily concern those proceedings and, accordingly, concern the administration of justice for the purposes of SO 53.
 - (d) The documents in category 6 comprise legal advices relating to the investigations of Mr Shanks and Mr Langker, the arrest and charging of Mr Langker and the withdrawal of those charges. To the extent the documents contain material concerning the arrest and charging of Mr Langker, I refer to my advice in respect of category 4 above. For legal advices concerning the investigation of allegations that Mr Shanks and Mr Langker committed certain offences, I refer to my advice in respect of category 1 above.

¹ CSO Ref 202103866 Advice 1, *Advice re SO52 – Moore L* (tabled 22 February 2022).

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- (e) The documents in categories 7-9, which are described as internal briefing documents prepared for different purposes, will not (without more) concern the administration of justice. However, to the extent they contain the same material as documents in other categories, my advice in respect of those other categories should *prima facie* apply.
 - (f) The documents in category 10, which are complaint files relating to police who were investigated for misconduct relating to the arrest and charging of Mr Langker, *may* concern the administration of justice for the purposes of SO 53 if they consider issues directly related to identifiable court proceedings. This is consistent with the Luke Moore advice.
5. For the documents held by DPC which are potentially responsive to the Order:
- (a) The documents in category 1 on p. 3 of your instructions, which relate to my engagement by DPC to act in responding to a subpoena issued in defamation proceedings brought by John Barilaro against Mr Shanks and Google LLC, would *prima facie* concern those defamation proceedings and so concern the administration of justice for the purposes of SO 53. I assume that all relevant documents were created after being served with the subpoena and for the purposes of responding to it.
 - (b) The documents in category 2 are described as the "collation, indexing and review of documents responsive to the subpoena". Documents produced in response to a subpoena, without more, would not concern the administration of justice for the purposes of SO 53. Consistently with my response in [5(a)] above, documents generated by a recipient in responding to the subpoena would concern the court proceedings and so, *prima facie*, concern the administration of justice for the purposes of SO 53.
 - (c) The documents in category 3, which are described as "Court documents" in the defamation proceedings, would be documents concerning the administration of justice for the purposes of SO 53.

Background

6. On 23 March 2022, the Legislative Council agreed to the following resolution:
- "That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents created since 1 January 2020 relating to the FriendlyJordies, Jordan Shanks, or Kristo Langker:
- (a) the following documents in the possession, custody or control of the Minister for Police, Attorney General, Department of Communities and Justice, NSW Police Force, State Archives and Records Authority of New South Wales or Department of Premier and Cabinet:
 - (i) all documents concerning the NSW Police Force investigation into Jordan Shanks or Kristo Langker by the Fixated Persons Unit,
 - (ii) all documents relating to Strike Force Wyargine,
 - (iii) all documents relating to the establishment of a NSW Police Force Strike Force to investigate the FriendlyJordies Youtube channel, Jordan Shanks or Kristo Langker,
 - (iv) all documents relating to the defamation action taken by former Deputy Premier John Barilaro against Jordan Shanks,

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- (v) all documents that refer to "Mark O'Brien" or "Mark O'Brien Legal",
 - (vi) all documents relating to the arrest of Kristo Langker,
 - (b) all correspondence, including emails, text messages, and messages via secure messaging apps, relating to FriendlyJordies, Jordan Shanks, or Kristo Langker, in the possession, custody or control of the Minister for Police, Minister for Transport and Minister for Veterans, Department of Communities and Justice, NSW Police Force, Department of Regional NSW, State Archives and Records Authority of New South Wales or Department of Premier and Cabinet, and
 - (c) 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."
7. You instruct me that documents held by NSW Police which are potentially responsive to paras. (a)(i)-(iii) and (vi) and para. (b) of the Order fall into the following categories:
- "1. Documents relating to the Fixated Persons Unit investigation into Jordan Shanks, including witness statements and other evidentiary material – the investigation concerned allegations that Mr Shanks committed offences including but not limited to intimidation and stalking.
 - 2. Documents relating to the Fixated Persons Unit investigation into Kristo Langker, including witness statements and other evidentiary material – the investigation concerned allegations that Mr Langker committed offences including but not limited to intimidation and stalking.
 - 3. Documents relating to the establishment and operation of Strike Force Wyargine to investigate the alleged commission of offences by Mr Shanks and Mr Langker – predominantly overlapping with items 1 and 2 above but also containing administrative documents such as emails and requests for legal advice and internal briefing documents which contain material obtained for the purposes of the investigations.
 - 4. Documents relating to the arrest and charging of Kristo Langker including court attendance notices, fact sheets, bail documents, custody management records, witness statements and other evidentiary material contained in the brief of evidence.
 - 5. Documents relating to the application for suppression/non-publication orders against Shanks brought in the criminal proceedings against Mr Langker including the application notice, requests for legal advice on proceedings for contempt and proceedings for suppression orders, and legal advice on same.
 - 6. Requests for legal advice, and legal advice, relating to the investigations of Mr Shanks and Mr Langker, the arrest and charging of Mr Langker, and withdrawal of those charges. All contain material extracted from 1, 2, 4, and 5 above.
 - 7. Internal briefing documents (emails, reports) which contain information extracted from the documents referred to at 1-6.
 - 8. Internal briefing documents (emails) which do not contain information extracted from the documents referred to at 1-6 (e.g., they are administrative emails advising of court dates, court outcomes, requesting status reports, forwarding media articles and links to the Friendlyjordies Youtube Channel).
 - 9. Internal briefing documents prepared to respond to Questions on Notice, Budget Estimates appearances and media inquiries.
 - 10. Complaint files relating to police who were investigated for misconduct relating to the arrest and charging of Kristo Langker. They contain directed interviews and other evidentiary material relating to the arrest and charging of Mr Langker."
8. You instruct me that there is one document held by NSW Police which falls within the scope of para. (a)(v) of the Order, which NSW Police intends to produce.

9. You instruct me that DPC was served with a subpoena in October 2021 in the defamation proceedings brought by Mr Barilaro against Mr Shanks and Google LLC. Documents held by DPC which are potentially responsive to para. (a)(iv) of the Order fall into the following categories:
- "1. The engagement of the Crown Solicitor's Office to advise and represent DPC in responding to the subpoena.
 2. The collation, indexing and review of documents responsive to the subpoena.
 3. A limited number of Court documents in the defamation proceedings."

Analysis

Documents "concerning the administration of justice" in SO 53

10. Standing Order 53 of the Legislative Council provides:

"53. Documents from the Governor

The production of documents concerning:

- (a) the royal prerogative,
- (b) dispatches or correspondence to or from the Governor, or
- (c) the administration of justice,

will be in the form of an address presented to the Governor requesting that the document be laid before the House."

11. As I have previously advised, the precise scope of SO 53 has not been settled, and it may be that it is not possible nor desirable to fix the exact scope of the meaning of "concerning the administration of justice". That said, there are several principles about its interpretation that are relevant for the purposes of this advice:²

- (a) The historical and constitutional basis for the distinction between the operation of SO 53 and SO 52 lies in the distinction between the Crown (as Sovereign) and the executive government, as well as the separation of judicial and legislative functions. The documents within paras. (a) and (b) of SO 53 are clearly within the purview of the Crown (as Sovereign). Unlike a Department administering the executive government's legislative and policy agenda, it is the Crown (as Sovereign) in whose name justice is administered by the courts, and so documents concerning such proceedings must be sought by an Address to the Governor under SO 53.

This context should inform the interpretation of SO 53.

- (b) Documents will "concern the administration of justice" if they contain material touching on or concerning court proceedings. There must be some connection with actual (or "particular", to use the language of the Solicitor General and Anna Mitchelmore)³ court proceedings, including prospective proceedings. As I recently advised, this is presumably because the

² This is a summary of the key principles about the interpretation of "administration of justice" in SO 53 as set out in advice of my predecessors and the Solicitor General. For more detailed discussion, see my previous advice CSO Ref 202003829 Advice 1, *Civil Claims and the NSW Police Force*. This advice was tabled in the Legislative Council by the Clerk of the Legislative Council on 16 February 2021; and see the following advices of my predecessors: CSO Ref LGC088.45, *Standing Order 19: Administration of Justice* (tabled 9 April 2002), CSO Ref 201403139, *Strike Force Emblems* (tabled 4 December 2014).

³ SG Ref SG 2014/05, *Question of Powers of Legislative Council to Compel Production of Documents from Executive* dated 9 April 2014 (tabled 16 April 2014).

historical and constitutional basis requires that the justice system administered by the Crown (as Sovereign) – the key feature of which is ordinarily the exercise of judicial functions – has in some manner been invoked or clearly contemplated in relation to the matter.⁴

- (c) There is more doubt about the extent to which antecedent matters (such as police investigations) and subsequent matters (such as the administration of a sentence) generally might be caught in the scope of matters “concerning the administration of justice”. However, documents containing material touching on or concerning matters antecedent or subsequent to identifiable court proceedings (including conduct which interferes with or prevents the institution of identifiable court proceedings) *may* do so, if they bear a sufficient relationship to such proceedings.
12. As my predecessor has advised, documents that consider issues directly related to identifiable court proceedings, whether past, on foot or pending, may be documents concerning the administration of justice for the purposes of SO 53. In a 2014 advice, my predecessor considered whether the report of Strike Force Emblems concerned the administration of justice for the purposes of SO 53. He described the report as “a police report written by NSW police for the NSW Police Commissioner” after investigation by Strike Force Emblems into “various issues raised by the New South Wales Police Association and accepted as a complaint under Part 8A of the *Police Act 1990*”.⁵ My predecessor advised (at [5.5]):

“The report touches upon or considers issues relating to the conduct of identifiable court proceedings, in particular, an issue about perjury in such proceedings, and at least two other references to identifiable court proceedings, and so it should be said to concern the administration of justice. The report therefore considers issues directly related to the identifiable court proceedings, past, on foot or pending.”

Application to categories of documents potentially responsive to the Order

NSW Police

13. In respect of categories 1 to 3, the Solicitor General and Anna Mitchelmore in their 2014 joint opinion said:⁶

“As to documents ‘concerning the administration of justice’, Lovelock and Evans cite (at 595) an opinion of the Crown Solicitor of 2002 to the effect that documents have reference to the administration of justice (as the predecessor to SO 53 provided) if they contain material touching on or concerning court proceedings or a police investigation leading to the administration of justice. It might be thought that documents dealing with the system of courts in general and not only particular proceedings would also fall within this category.”

14. As noted in the summary at [11(c)] above, documents which touch on or concern antecedent matters (like police investigations) *may* concern the administration of justice if they contain material sufficiently related to court proceedings, including prospective proceedings.

⁴ CSO Ref 202103652 Advice 1, *Whether documents relate to the administration of justice* (tabled 22 February 2022) at [15].

⁵ CSO Ref 201403139 Advice 1 at [5.4].

⁶ SG 2014/05 at p. 8. The 2002 Crown Solicitor’s advice referred to therein is CSO Ref: LGC088.45, an advice concerning then Standing Order 19 (now 53), tabled in the Legislative Council on 9 April 2002.

15. Having regard to my comments at [11] above, it may be easier to conclude that documents concern the administration of justice if they contain material concerning a police investigation that leads to charges being laid, as opposed to an investigation that does not. Similarly, it may be easier to conclude that documents concern the administration of justice if court proceedings are clearly contemplated at the time they are created, and the documents have been generated for a purpose connected to those proceedings. However, it does not follow that *all* documents concerning a police investigation, even where charges are ultimately laid, will concern the administration of justice for the purposes of SO 53. The relevant question is whether those documents contain material sufficiently related to identifiable court proceedings.
16. In respect of category 4, I recently advised in the Luke Moore advice that the decision to arrest and charge a person with a criminal offence is a decision to initiate particular criminal proceedings against the person, and so documents relating to the arrest and charge of Mr Moore will concern the particular criminal proceedings initiated against him. Accordingly, *prima facie*, such documents would concern the administration of justice for the purposes of SO 53.⁷
17. The documents in category 4 are described as "relating to the arrest and charging of Kristo Langker". For the reasons set out in the Luke Moore advice, *prima facie*, such documents would concern the administration of justice for the purposes of SO 53.⁸
18. In respect of category 5, a suppression or non-publication order is an order by a court in respect of particular proceedings. An application for such an order would ordinarily concern those proceedings and, accordingly, concern the administration of justice for the purposes of SO 53. I note that the power to make such an order is concerned with preventing prejudice to the proper administration of justice: see *BUSB v R* (2011) 209 A Crim R 390 at [28]); *Court Suppression and Non-publication Orders Act 2010*, s. 8.
19. My predecessor advised that "it is not, in [his] view, sufficient for a document to contain an opinion or evidence of an opinion as to whether an offence has been committed or whether proceedings should be instituted".⁹ While this was in the context of the Strike Force Emblems report, a similar argument could conceivably be made about documents containing opinions as to whether to make an application for a suppression order (especially if no such application was made). However, documents relating to an application for a suppression order in the context of identifiable court proceedings which have already been commenced would have a closer relationship to those proceedings and so be more likely to concern the administration of justice for the purposes of SO 53.
20. In respect of category 6, to the extent the documents contain material concerning the arrest and charging of Mr Langker, I refer to my advice in respect of category 4 above. For legal advices

⁷ CSO Ref 202103866 Advice 1 at [5], [15], [19]-[20].

⁸ While it does not change my views, I note that the Council debated the Luke Moore advice on 30 March 2022. The Hon. Rod Roberts moved that the Council reject my interpretation of SO 53 in that advice, and the debate was adjourned until 10 May 2022: available at <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1820781676-88642/HANSARD-1820781676-88706>.

⁹ CSO Ref 201403139 Advice 1 at [5.6].

concerning the investigation of allegations that Mr Shanks and Mr Langker committed certain offences, I refer to my advice in respect of category 1 above. For completeness, I note that the fact a document constitutes legal advice will not, of itself, be sufficient to conclude that the document concerns the administration of justice.

21. In respect of categories 7 and 8, internal briefing documents will not, without more, concern the administration of justice. However, I refer to the principles outlined above. For documents in category 7 that contain extracts of information in the documents in categories 1-6, I refer to my advice in respect of those categories which should *prima facie* apply to the category 7 documents in the same way. As advised by my predecessor in the Strike Force Emblems advice at [5.8], SO 53 applies to "documents" and "it is accordingly appropriate to characterise a document as a whole, and not by dividing issues or section etc. artificially".
22. In respect of category 9, these documents would be treated in the same way as the briefing documents in categories 7 and 8. In other words, the fact that they were prepared to respond to Questions on Notice, Budget Estimates appearances and media inquiries does not, without more, change the position for the purposes of SO 53.
23. In respect of category 10, I refer to the Luke Moore advice. The background to the order for papers in that case included that Mr Moore lodged a complaint with NSW Police about his arrest, which was investigated by NSW Police. In [20] of that advice, I noted:

"It may be that some of the documents that relate to the arrest, charge and detention of Mr Moore were created after the finalisation of the criminal proceedings and for the purpose of the investigation of Mr Moore's complaint. Consistent with the advice of my predecessor in relation to Strike Force Emblems, those documents may still concern the administration of justice for the purposes of SO 53 if they consider issues directly related to identifiable court proceedings".

DPC

24. In respect of category 1, I assume that all relevant documents were created after being served with the subpoena and for the purposes of responding to it.
25. A subpoena is issued by the court at the request of a party to proceedings before it. In my view, it is reasonably clear that the subpoena itself – along with documents generated by a recipient in responding to the subpoena, including legal advice obtained for that purpose – would concern those court proceedings. Accordingly, those documents would *prima facie* concern the administration of justice for the purposes of SO 53.
26. In respect of category 2, documents produced in response to a subpoena would not, without more, concern the administration of justice for the purposes of SO 53.¹⁰ As noted above in respect of


¹⁰ I recently advised on the application of SO 53 to a report prepared by the Rural Fire Service ("RFS"): CSO Ref 202103652 Advice 1. I advised that, while not without doubt, the report – which was prepared by RFS for its own purposes and subsequently obtained by NSW Police as part of a coronial investigation – concerned the administration of justice for the purposes of SO 53. However, that advice was in the context of coronial proceedings (as opposed to adversarial judicial proceedings) and I had the benefit of the Coroner's views as to the probative significance of the report and, significantly, the prejudice to future coronial proceedings of the report's release.

category 1, documents generated by a recipient in responding to the subpoena would concern the court proceedings. Accordingly, those documents would *prima facie* concern the administration of justice for the purposes of SO 53.

27. In respect of category 3, court documents which have been prepared for the purposes of and filed in those proceedings would be documents concerning the administration of justice for the purposes of SO 53. That said, I note that, in the Federal Court, various court documents are publicly available (see *Federal Court Rules 2011* (Cth), r. 2.32) and so those documents presumably do not need to be the subject of a call for production in any event.

A handwritten signature in black ink that reads "Karen Smith".

Karen Smith
Crown Solicitor

A handwritten signature in black ink that reads "N. Borger".

Nicholas Borger
Acting Principal Solicitor

Office of the Minister for Police
ORDER FOR PAPERS - SO52 - Friendlyjordies
NON-PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
1	Media enquiry re fixated unit	12/11/2021	Office of Minister Toole	N
2	Email re media article	10/03/2022	Office of Minister Toole	N
3	REMOVED			
4	Emails re FJ video	21/03/2022	Office of Minister Toole	N
5	Correspondence re fixated unit (personal details redacted)	21/03/2022	Member for Shellharbour	N
6	Correspondence re fixated unit (personal details redacted)	10/03/2022	Mr Garry Burns	N

DEPARTMENT OF REGIONAL NSW

ORDER FOR PAPERS – FriendlyJordies (1720)

NON-PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
Clause (b)				
(b) 001	Memo – Wilcannia response	06/09/2021	DRNSW	N
(b) 002	Text message	05/11/2021	DRNSW	N
Clause (c)				
Nil				

DEPARTMENT OF PREMIER AND CABINET

ORDER FOR PAPERS – FRIENDLYJORDIES (23 March 2022)

NON-PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
(b) 1	FW: Friendly Jordies Flyers strewn in Martin Place	15/06/2021	DPC	Y (redactions made of personal information)

Office of the Minister for Police
ORDER FOR PAPERS - SO52 - FriendlyJordies
PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim	Claim for Privilege
				Y/N?	
5	Correspondence re fixated unit	21/03/2022	Member for Shellharbour	Y	Personal information
6	Correspondence re fixated unit	10/03/2022	Mr Garry Burns	Y	Personal information

**PRIVILEGE SUBMISSIONS FOR RETURN TO ORDER:
FRIENDLYJORDIES (23 March 2022)**

This submission has been prepared in support of the claims for privilege made, pursuant to Standing Order 52(5), by the Office of Minister for Police over documents responsive to the Order of the Legislative Council of 23 March 2022.

It is not in the public interest to publish the documents over which privilege claims are made for the reasons outlined below.

Personal information

Personal information has been defined by Parliament in the *Privacy and Personal Information Protection Act 1998* as "information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion". That Act (and others, such as the *Government Information (Public Access) Act 2009*) ordinarily protects such personal information from public disclosure. In the context of Standing Order 52, this usual recognition of the privacy of personal information and the need for government to respect and uphold that privacy is a public interest which weighs against the public interest in disclosure of that information in many circumstances.

In relation to documents 5 and 6 a claim of privilege is made on the basis of the information being personal information.

The Office of the Minister for Police understands that the personal information is not publicly available and was received in circumstances where there was no expectation of publication. The publication of such information is not in the public interest because it would reveal the personal information of a private citizen in circumstances where that publication would not have been anticipated and where there has been no notice or consultation with the person concerned.

On this basis, the Office of the Minister for Police has redacted personal information from documents 5 and 6 in the non-privileged bundle. That information takes the form of a personal email address and a personal home address.

Accordingly, the Office of the Minister for Police requests that the House exercise its discretion not to publish the redacted information.

DEPARTMENT OF PREMIER AND CABINET

ORDER FOR PAPERS – FRIENDLYJORDIES (23 March 2022)

PRIVILEGED DOCUMENTS

Document No.	Document	Date of Creation	Author	Privilege Claim Y/N?
(b) 1	FW: Friendly Jordies Flyers strewn in Martin Place	15/06/2021	DPC	Y (redactions made of personal information)
(b) 2	A5030765 – Brief – QoN – LC 6840 – USE OF PUBLIC RESOURCES IN DAFAMATION ACTION AGAINST JORDAN SHANKS	Undated	DPC	Y
(b)(3)	A5030765 – Attachment A – Question and Answer – QoN – LC6840 - USE OF PUBLIC RESOURCES IN DAFAMATION ACTION AGAINST JORDAN SHANKS	Undated	DPC	Y

SUBMISSION IN SUPPORT OF CLAIM FOR CONFIDENTIALITY AND PRIVILEGE BY THE DEPARTMENT OF PREMIER AND CABINET

In accordance with the terms of the resolution agreed to by the Legislative Council on 23 March 2022, and the terms of Standing Order 52, documents have been identified for production by the Department of Premier and Cabinet (DPC) and the potential application of privilege to those documents has been considered. This submission has been prepared in support of the claims for privilege made by the Department.

It is to be noted that these claims for privilege are not raised as a basis to resist production of documents that are within scope of the resolution. Rather, these claims are made, pursuant to Standing Order 52(5), to identify those documents over which privilege may be claimed, in order to allow the Legislative Council to consider the claims and in support of an application that it is in the public interest that the documents should not be made publicly available.

Personal information

Personal information has been defined by Parliament in the *Privacy and Personal Information Protection Act 1998* as "information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion". That Act (and others, such as the *Government Information (Public Access) Act 2009*) ordinarily protects such personal information from public disclosure.

In the context of Standing Order 52, this usual recognition of the privacy of personal information and the need for government to respect and uphold that privacy is a public interest which weighs against the public interest in disclosure of that information in many circumstances.

In relation to document (b)(1) a claim of privilege is made on the basis of the information being personal information.

The Department notes that no claim of privilege on the basis of personal information can be made in respect of the contact details of public servants. However, the Department considers that special considerations apply in respect of the mobile phone number of the public servant who may, as a result of disclosure, receive inappropriate unsolicited calls.

The Department also notes that there is no public interest in disclosing the mobile phone contact details, particularly where there are alternate channels for contacting the relevant officer.

On this basis, the Department has redacted the personal information from document (b)(1) in the non-privileged bundle. That information takes the form of a mobile phone number.

Accordingly, the Department requests that the House exercise its discretion not to publish the redacted information.

Parliamentary privilege

In relation to documents (b)(2) and (b)(3), a claim of public interest privilege is made on the basis that the information would be subject to **parliamentary privilege** if raised before a Court. It is not suggested that parliamentary privilege would apply to prevent these documents from being produced to the Legislative Council under Standing Order 52.

However, it is relevant to the question of publication (which is what privilege claims under Standing Order 52 are concerned with) that parliamentary privilege can be pleaded between courts and Parliament,

because that privilege is based on recognition that the disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that: ¹

“It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament.”

Documents (b)(2) and (b)(3) are, respectively, a brief to the Premier regarding a proposed answer to a question on notice, and the proposed answer to the question on notice. Parliamentary privilege would apply to prevent documents of this kind from being produced to a court, or to another “place out of Parliament” within the meaning of Article 9 of the *Bill of Rights 1689* (Imp) ².

The possible impact of publication on the quality of information available to Parliament, as identified by Austin J, and the possible impact of such publication on the ability to claim parliamentary privilege in future legal proceedings, are relevant and important public interests against disclosure of these documents.

Department of Premier and Cabinet

13 April 2022

¹*Opel Networks* [2010] NSWSC 142 at [118]; (2010) 77 NSWLR 128 at 134.

²See, for example, *Sportsbet Pty Ltd v Harness Racing Victoria* (No 4) [2011] FCA 196 at [20]-[22]; and *In the matter of Opel Networks Pty Ltd (in liq)* [2010] NSWSC 142; (2010) 77 NSWLR 128.