

This document has been redacted for Public Interest Immunity claims made by Victoria Police. These claims are not yet resolved.

**From:** Leane, Stephen  
**Sent:** Thu, 10 Apr 2014 15:37:02 +1000  
**To:** Lay, Ken (COMMISSIONER)  
**Subject:** RE: LETTER\_IBAC final.doc  
**Attachments:** LETTER\_IBAC final.2.doc

This should do it.



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**From:** Lay, Ken (COMMISSIONER]  
**Sent:** Thursday, 10 April 2014 1:43 PM  
**To:** Leane, Stephen  
**Subject:** LETTER\_IBAC final.doc

<< File: LETTER\_IBAC final.doc >>

Stephen, sorry, this is half cooked.

Ken

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Our Ref: FF-085766

Mr Stephen O'Bryan  
Commissioner  
IBAC  
459 Collins Street  
Melbourne VIC 3000

Dear Mr O'Bryan

### **Human Source Management**

I write in response to your letter dated 3 April 2014, addressed to Acting Chief Commissioner Tim Cartwright.

Disturbingly, there is growing evidence that people with an intimate knowledge of the police decisions and actions in relation to a registered Human Source is being provided to a journalist.

There has been considerable work done by Victoria Police and others in regard to both Witness "F" and the broader issues of informer source management. I undertake to ensure that you are provided full copies of each of these documents. In addition to the brief chronology attached, I have taken steps to have a complete detailed chronology of the key issues and dates constructed to give a complete overview of all of the relevant issues. That material will be made available to you prior to 1 May 2014. In summary though, the status of the current internal work is as follows.

- i. Victoria Police Review - Human Source Case Review by Mr M. (Neil) Comrie AO APM (the "Comrie Review") July 2012

It includes the Terms of Reference and 27 separate Recommendations.

I have since appointed Deputy Commissioner Cartwright to ensure implementation of all recommendations and for the completion of Operation Loricated. As you would be aware, this work is addressing the first recommendation made in the "Comrie Review". Mr Rob Sutton from your office has been provided with a copy of this report.

Operation Loricated was established to address recommendation 1 of the Human Source 3838 case review conducted by Mr Comrie. This recommendation required Victoria Police to review all of the intelligence holdings sourced from Human Source 3838 to determine what operational value they may contain. As

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part of that process, a number of information reports have been identified which may allude to the ethical performance of witness 'F' in regard to professional duties. In response to the request contained in your letter dated 3 April 2014 I have attached the terms of reference, project timeline and scope of that review.

I will be seeking an independent post implementation review of all of recommendations of the Comrie Review. This will give both me, and the broader community, a level of confidence that this critical and often problematic area of police work is being properly managed.

ii. OPI (confidential) Report – Operation Degree

I understand you also have a copy of this report as part of the hand over of the OPI to IBAC. As you may be aware, this report, dated 28 May 2012 concerned the death of Carl Williams and specifically focused on the protection and management of Williams.

iii. Victoria Police Review - A Review of Victoria Police Witness Protection Program (The Robinson Report) November 2012

The "Robinson Review" was commissioned in response to the OPI report regarding Operation Degree.

In summary, the Robinson Report Terms of Reference focused on the operation, role and function and governance of the Witness Protection Act. Included in the scope of the review was the examination of oversight joint management of custodial crown witnesses and other structural matters within Victoria Police. Many of the recommendations of the Robinson Report have been implemented including the amendment of relevant pieces of legislation which are currently before the Parliament. I will have a copy of the report provided to your office.

### **Safety of Witness "F"**

The primary concern for Victoria Police is the safety of the Human Source known as Witness 'F' or '3838'. The media reporting in the past week has significantly heightened the risk to the life of Witness 'F'. Victoria Police has obtained interim restraining and suppression orders from the Supreme Court directed at the Herald and Weekly Times to mitigate the risk of further media reporting. An order was made on Thursday, 3 April 2014 (see Attachment 2). A further order was made on 10 April 2015 (see attachment 3).

Other media outlets were advised as to the existence of restraining orders and provided assurance to Victoria Police that they would not publish articles identifying Witness 'F'. Arrangements have also been made to provide immediate protection to Witness 'F' in the short term, although this remains problematic because of the expectations of the witness.

I have instructed my Director, Legal Services (Fin McRae) to keep your office informed of progress of the Supreme Court proceedings and any suppression orders.

In light of the confidential nature of some of the reported information, Victoria Police has a strong suspicion that either current or former members (or both) of Victoria Police have been responsible for some of the media reports. As recently as last week, there are indications that the contents of a highly confidential and damaging document were released to a media outlet. The witness has also raised

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allegations of police corruption (leaks) in the last week. Professional Standards Command has commenced an investigation into the leaks.

I note that Assistant Commissioner Stephen Leane has advised your office of the commencement of an investigation into these matters.

### **Emerging Risks**

There are a number of aspects of this investigation and peripheral issues that cause me significant concerns. I am of the view that the allegations require an investigation independent of Victoria Police. This view was formed after considering:

- i. the very real potential of a witness being murdered as a result of possible leaks from Victoria Police.
- ii. the extraordinarily high level of media and public interest in this matter, and;
- iii. the additional investigative tools that are open to IBAC, specifically, coercive hearings

The circumstances of these matters have been complex and protracted. A summary of the key events that are relevant to the situation (see attachment one) are provided to assist with context. While the chronology of events provided is not complete it gives some background and an indication of the repeated attempts to provide protection to the witness.

Deputy Commissioner Cartwright is also managing the arrangements around the safety of Witness 'F'. I have also directed other key staff to ensure that all other documents relevant to this matter are provided to your office and that you be continually apprised of developments.

As a result of the above I, pursuant to Section 57 (6) of the Independent Broad-based Anti-Corruption Commission Act 2011, I make formal notification of police personnel conduct and request that:

- i. IBAC take primacy of the investigation into the media leaks that relate to Witness "F" a registered Victoria Police Human Source, and;
- ii. IBAC conduct a post implementation review of the recommendations contained in the Comrie Report.

Yours sincerely,

Ken D. Lay APM

Chief Commissioner

/ /2014

**(Attachment One)***Chronology*

- **Source Development Unit, 2005**

7/9/05 – Major Drug Investigation Division (MDID), staff approached the dedicated source unit (DSU) advising an emotional source (Witness 'F' known at that time as source - 3838) had approached MDID detectives claiming to be at risk of being killed and wanting to talk about association with the Mokbel crew.

19/9/05 Registration process for 3838 commences
- **Petra Taskforce, 2007**

16/05/07 - AC Crime approved Petra Crime Taskforce to approach 3838.

25/11/08 – Petra Taskforce approves 3838 or witness 'F' to be a witness in the prosecution of Paul Dale.

7/1/09 – Witness 'F' signs a statement.

Jan 2009 – Discussion commences on protection options.

2/2/09 – Declines witness protection.
- **Corporate Management Review Division (CMRD), Vicpol, 2010**

Review of compliance with policy relating to management of human sources. CMRD made 26 recommendations. All but two were accepted. It understood that the recommendations were implemented relating to systems, supervision and policy.
- **Civil Case – Supreme Court, 2010**

On 30 April 2010, Witness 'F' files a writ with the Supreme Court naming as defendants the State of Victoria and others. The writ contained information about the approach to assist police in the Dale Prosecution. The causes of action included, contract, estoppel, breach of fiduciary duties and negligence.

Victoria Police was represented by VGSO with Wheelahan QC engaged as counsel. Victoria Police admitted liability (on senior counsel advice) and a settlement strategy was prepared for an early mediation. The State of Victoria received separate advice from Hanks QC on quantum and OPI were advised of the settlement strategy and provided with the Vicpol advice on liability and briefed by Vicpol and the then Victorian Government Solicitor. On 11 August 2010, the matter settled at mediation conducted by Chernov QC.

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**(Attachment One cont)**

▪ **Driver Taskforce, 2011/2**

Driver Taskforce conducted an investigation of all matters associated with the death of [REDACTED]

Driver's findings informed several discussion papers on key topics (Intelligence; Formation and Management of Taskforces; Custodial Witnesses; Judicial Issues; Media Management) and informed the preparation of the brief for the Coroner. The Driver Taskforce assumed the responsibilities for the management of the investigation and prosecution of Paul Dale post the closure of Taskforce Petra.

3 November 2011, offer of protection rejected by Witness 'F'.

On 8 November 2011, representatives of Victoria Police met with the Commonwealth DPP and advised him of an unacceptable risk to Witness 'F' if called to give evidence in a trial relating to evidence given by Paul Dale to the Australian Crime Commission. In a letter dated 8 November 2011, then Superintendent Doug Fryer informed Witness 'F' that he could not 'envisage' Victoria Police engaging the witness again for the provision of testimony due to serious security concerns.

▪ **Investigation Report, OPI, Operation Degree: Protection and Management of [REDACTED] 28 May 2012**

An 'own motion' review examining the protection and management of [REDACTED] after this person's death in custody. The report highlighted several shortcomings on the part of Victoria Police in their dealings with [REDACTED] and referred them for consideration to the Chief Commissioner.

▪ **Human Source 3838 – A Case Review. Mr Neil Comrie, August 2012**

This review commissioned by Victoria Police (commenced 31 January 2012) examined the management of Covert Human Intelligence Source (CHIS) 3838. This identified symptoms of sub-optimal performance relating to the governance of covert programs; the identification, reporting and treatment of key strategic risks; and the management of the possible transition from CHIS to witness status. Other observations relate to the need for improved understanding and management of these processes and their implications for the safety of all parties.

Victoria Police is preparing a post implementation update on the 27 recommendations arising from the review expected to be completed in the next two weeks. Recommendation One is being progressed by Operation Loricated (see below).

▪ **Documents provided to OPI post Comrie Review, 2012**

On 31 August 2012, OPI was provided by Vicpol with an overview of the case study from the Comrie Review, copy letter from CCP and an issues paper listing concerns regarding the nature of some information provided by the source along with a list of entries from interpose holdings of 3838.

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**(Attachment One Cont)**

VGSO legal advice was also provided addressing legal professional privilege considerations. Victoria Police is not aware of the outcome of the OPI investigation.

- **Review of the Victoria Police Witness Protection Program. Mr R Robinson, November 2012**

A separate review of the Victoria Police Witness Protection Program commissioned by Victoria Police in response to the OPI Operation Degree Investigation Report. This review contained 44 recommendations that were accepted by Victoria Police Executive Command and are currently being implemented.

- **Operation Loricated, January 2013 to current date**

Operation Loricated is ongoing and reports to a steering committee, now chaired by Deputy Commissioner Cartwright. Formerly, Operation Loricated reported to a committee chaired by AC Fontana and reporting to DC Cartwright as the responsible executive officer.

All the information reports for 3838 have been entered on a database and any matters requiring further consideration or follow up have been identified and included under themes . The themes include categories such as corruption allegations, discipline, drugs, legal conflict, and other operational themes. Victoria Police intends to assign the various themes to appropriate areas to action with a view to finalise each matter. For example, Professional Standards will progress any matters relating to discipline, corruption or legal issues.

It is expected that the information reports grouped under the Court and/or legal themes may relate to past prosecutions. The Director of Public Prosecutions has indicated that he would like to discuss any such issues with the Director, Legal Services (Victoria Police) prior to transmission of the materials to his office. Assessment and triage of the materials grouped under these themes will be undertaken by Legal Services and PSC and is yet to commence. Once that work has been conducted your office will be briefed as to the outcomes.