



**VICTORIAN GOVERNMENT
SOLICITOR'S OFFICE**

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Our reference: 1071810

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1 April 2010

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Attention: Mr Tony Hargreaves

By fax: 9670 [REDACTED]

No of pages: 3

Dear Mr Hargreaves

**Paul Dale – Witness Summonses to Chief Commissioner of Police to Produce Documents
in the Magistrates' Court**

We refer to the above witness summonses issued 27 January 2010 (the 1st subpoena) and 31 March 2010 (the 2nd subpoena) and your letter dated 31 March 2010 accompanying the 2nd subpoena (your letter).

The 2nd Subpoena

In relation to the 2nd subpoena we advise that we accept service of the document in its electronic form on behalf of our client.

We are instructed that a large quantity of the documents which fall within the scope of the 2nd subpoena are either documents held by Inspector Steve Smith or which require his examination to properly consider claims of relevance or public interest immunity upon which we may be instructed to resist disclosure. Please be advised that Inspector Smith is presently on holidays overseas and will not be able to give this matter his attention until after 12 April 2010. We will be seeking an adjournment of the return on this subpoena to allow for the attention necessary by Inspector Smith.

The 1st Subpoena

In relation to the 1st subpoena and the court proceedings concerning it which have so far been conducted, we wish to establish with you, in very clear terms, our relative positions.

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- 2 -

Compliance

It is our instructions that all of the documents which fall within the subpoena have been produced except for the documents which you refer to under numbered item 4 of your letter. We are instructed that those documents are being sought for production as expeditiously as possible. Irrespective of any previous statement on time of production, we now advise you of our instructions in relation to those documents. It is unlikely that those documents will be produced before 12 April 2010.

The documents are not held by Petra Taskforce and are being sourced. We are instructed that obtaining and vetting the documents for potential disclosure issues is a time consuming process resulting from the quantity of documents to be checked to establish whether they are relevant to the subpoena, the period of time over which the documents may have been created and consulting all of the personnel involved in the creation of the document or may otherwise have knowledge that goes to any disclosure issues.

Claims Against Disclosure

Our client accepts that he bears the onus of substantiating to the court's satisfaction that the subpoena should be set aside as it relates to the content which has been redacted and will, if called upon, have police members suitably knowledgeable in the issues provide evidence on having those parts of the subpoena set aside.

However, given the broad scope of the subpoena (involving some 18 large ringbinder folders that have been produced so far) and the limited time available to deal with it without adversely impacting on the criminal process, we were instructed to attempt to engage you in negotiation with the object of limiting the number of documents which would be subject to an application to have the subpoena set aside in part.

We understood those negotiations to have been successfully concluded on the basis that you have informed our client, through Mr Gipp, of the documents which you require substantiation of the claims against disclosure. We are instructed that the names of five people were provided and there was agreement that evidence to have the subpoena set aside in part would only be required on any document upon which a claim of informer privilege is made which refers to one of those people.

On the basis of that understanding, Mr Gipp identified a quantity of documents as those relevant to those five people which had content redacted. Those documents were then made the subject of affidavits and provided to the magistrate.

In the court proceedings it has become clear that what we are instructed was the agreement is not your view on the matter. Mr Dale's counsel has, on a number of occasions, referred to documents or parts of documents which he says should have been provided to the magistrate but which do not involve the claim of informer privilege on any of the five named persons. For example, a number of pages from a transcript extracted from a recorded conversation were identified as relevant to the agreement. The magistrate was provided with those relevant pages. It was submitted by counsel for Mr Dale that the entire transcript should have been provided to the magistrate.

Further, in your letter, numbered items 1 to 3 do not accord with our instructions. In addition to the conversation transcript, a quantity of police member notes and information reports were identified in which the five named persons were relevant and the subject of informer privilege claims. Those documents have been provided the magistrate in their unedited form. Your

- 3 -

letter now appears to suggest that all notes and information reports subject to any kind of public interest immunity claim is now the subject of dispute.

We therefore request that you specifically identify the documents in respect of which you challenge our client's claims against disclosure. Further, that you confirm that you concede our client's claim against disclosure in relation to the remainder of the subpoenaed documents.

In the absence of finding common ground on this issue we will advise the court of the necessity for a lengthy adjournment of the matter for our client to prepare evidence by affidavit on the grounds upon which the subpoena should be set aside as it applies to all of the redacted parts of documents.

If you have any queries regarding this matter please contact Greg Elms on 9247 [REDACTED]

Yours faithfully
Victorian Government Solicitor's Office

Shaun Le Grand
Managing Principal Solicitor

