

Greg J Carroll
Sent by: Greg J Carroll
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To: Graham Ashton, John Nolan, Vanessa Twigg
 CC:
 Subject: OPI and PETRA

John and Graham,

LEGAL ADVICE

There seems to be a misunderstanding of Legal's view on this issue. Vanessa's advice was simply as follows.

There is no joint agency agreement. The warrants in OBOE are OPI warrants taken out for the purposes of an OPI investigation. The VicPol investigation, although covering some of the same ground as OPI's investigation, is a Vicpol criminal investigation for VicPol purposes. It is not an OPI investigation for the purposes of OPI's statutory objects. Therefore, communication by OPI of product to VicPol for the purposes of their (i.e VicPol's) investigation in the absence of a Joint Agency Agreement would not be communication for a "permitted purpose" within the meaning that term as used in s. 67 of the T.I Act. Such communication could not be construed as communication for a purpose connected with an investigation by the Director of conduct or serious misconduct of a member of the force within the meaning of the PRA. The product cannot lawfully be communicated pursuant to s. 67.

That is not to say it cannot lawfully be communicated in the absence of a Joint Agency Agreement. It may be communicated pursuant to s. 68. I understand that Vanessa has advised that this is a more cumbersome pathway involving more onerous record keeping etc.

Therefore the choice is simple. Either a Joint Agency Agreement is executed and product can be communicated pursuant to s. 67 OR there is no Joint Agency Agreement and any communication of product must be pursuant to s. 68.

There is no vehemence in this advice. It is a simple statement of the law.

SHOULD THERE BE A JOINT AGENCY AGREEMENT?

I have earlier put the view that it would be advantageous for OPI not to engage in a Joint Agency Agreement and to maintain our independent oversight role in this matter. This is because it will be necessary for OPI to conduct a critical assessment of the entire investigation of the Hodson murders to date. I suspect there will be much about which OPI may be critical. These murders have raised some very tricky questions since day one. OPI led the way with the investigation of IR44 (VicPol didn't even know this document was missing). Despite this - and the repeated speculation in the media and elsewhere arising out of the Hodson case about police involvement in the murders, police links with the so-called gangland killings etc. - it appears these questions have not been seriously addressed by VicPol until very recently with the formation of Taskforce Petra.

In this context there are obvious advantages in OPI remaining at arm's length from the whole VicPol operation. OPI should not be seen to have compromised our independence.

Having said this, it is recognised that there are strong counter arguments.

- OPI wants the murder of the Hodsons solved because it will clarify the murky questions of possible police involvement and links with criminals etc. to which I have referred above. OPI should be, and is, prepared to offer any assistance it can to VicPol to achieve this goal, including sharing of information and resources for the very good reasons outlined in John Nolan's email.

- Even if PETRA fails to solve the murder of the Hodsons, there is every possibility that information directly relevant to the jurisdiction and function of the Director will be obtained along the way. Of course, if PETRA succeeds, we want to be on the podium.

- Although OPI cannot actively be involved in the investigation and retain its independent oversight role at the same time, the particular circumstances of this case allow a "split" of these two functions. A carefully constructed Joint Agency Agreement in relation to the "restarted" investigation to be conducted by PETRA will allow active participation by OPI in the investigation from now on, without compromising our capacity to assess the investigation to date in a very independent and critical way.

Legal has expressed a strategic preference re where OPI should be. Again, there is no vehemence in this view. It is merely one perspective on what is a difficult question. However, Legal recognises that the decision is an operational decision and also recognises the practical advantages of executing a joint agency agreement with PETRA to allow for cooperation in the renewed investigation of matters that are clearly of relevance to the Director.

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