

**ROYAL COMMISSION
INTO THE MANAGEMENT OF POLICE INFORMANTS**

STATEMENT OF SHAUN LEON LE GRAND

SHAUN LEON LE GRAND of 637 Flinders Street, Docklands, Victoria STATES:

A Introduction

1. I am a Victorian Public Service employee employed as a Discipline Inquiry Officer at Victoria Police.
2. I was previously employed as a solicitor at the Victorian Government Solicitor's Office (**VGSO**) from 3 March 2008 to 22 June 2018.
3. I make this statement in response to a request from the Royal Commission into the Management of Police Informants dated 12 August 2019 and produce this statement to the Royal Commission in response to a Notice to Produce dated 20 September 2019.
4. I was admitted to the legal profession in Victoria in 1993 and have in excess of 25 years' experience as a practising lawyer. I attach to this statement my curriculum vitae.

B Employment with VGSO

5. From 3 March 2008 to 31 December 2015, I was employed at the VGSO Police Branch in different roles.
6. During my time at the VGSO, the Police Branch was one of the five branches of the VGSO.
7. The VGSO Police Branch provides legal services to Victoria Police on a wide range of matters relevant to the Victorian Police Force and its officers.
8. The VGSO Police Branch, like each of the other VGSO branches, was managed by an Assistant Victorian Government Solicitor (**AVGS**).
9. From 3 March 2008 to 30 August 2010, I was employed at the VGSO Police Branch in the position of Managing Principal Solicitor. In that role I managed a team of about 5 lawyers and I reported to the AVGS, Police Branch – Kirsty McIntyre.



10. From 31 August 2010 to 31 December 2015, I managed the VGSO Police Branch, first as Acting AVGS (from 31 August 2010 to 7 February 2011), then as AVGS, Police Branch (from 8 February 2011 to 31 December 2015).
11. From 1 January 2016 to 22 June 2018, I was employed as an AVGS managing a different branch of the VGSO: the Litigation and Dispute Resolution Branch.

C Requests from the Royal Commission

- (1) **Provide details of how you learned, or were given reason to suspect or believe, that a person, who had ongoing legal obligations of confidentiality and privilege was providing information or assistance to Victoria Police, including when that occurred and in what circumstances that occurred.**
12. When I was employed at the VGSO, I learned or I was given reason to suspect or believe that Nicola Gobbo, who was a criminal defence barrister and therefore had obligations of confidentiality and privilege, was providing information or assistance to Victoria Police. I provide the details of this in my response to Question (3) below.
13. In about 2013 or 2014, I was asked by Findlay McRae (Director, Legal Services of Victoria Police) to attend a meeting with Inspector Greg Hough and Senior Sergeant Boris Buick. I only have a faint recollection of the meeting. I recall that the officers asked me to assume that a lawyer had approached police with an offer to provide information about a previous client in relation to criminal activities, before asking me whether the information could be received. I recall verbally advising them in the meeting that there was a distinction between past crimes and future crimes. I said that police should assume that information about a past crime was likely to be privileged and so should not be received, whereas there may be scope to receive information about future crimes, provided the lawyer was not drawing upon confidential information when doing so. I believe that I indicated that my advice was preliminary and recommended they obtain written advice from the VGSO before proceeding. I do not recall being asked to provide any further advice on the matter.
14. I do not recall there being any mention of the name of the lawyer in the meeting and I do not recall anything occurring in the meeting that gave me reason to suspect or believe that a lawyer was actually providing confidential or privileged information to Victoria Police. I am only bringing the meeting to the attention of the Royal Commission for the sake of completeness because, in [REDACTED] there were [REDACTED] reports that [REDACTED] may have been [REDACTED] and I recall

Mr McRae telling me on or around the day of those [REDACTED] reports that [REDACTED] was [REDACTED] that had been the subject of [REDACTED] I have no knowledge of this matter, although I am aware of media reports suggesting that [REDACTED]

(2) Detail how you learned, or were given reason to suspect or believe, that Ms Gobbo was providing information or assistance to Victoria Police, including when that occurred and in what circumstances that occurred.

15. Sometime in 2009, I learned that Ms Gobbo was providing information or assistance to Victoria Police.
16. I was requested by my manager, Kirsty McIntyre, to work with her in receiving instructions on a new matter that involved providing legal advice to Victoria Police. We met with Mr McRae who introduced us to Assistant Commissioner Luke Cornelius and Inspector Steve Smith.
17. I have not had the benefit of seeing any documents to refresh my memory in relation to this matter. Doing the best that I can, I recall that AC Cornelius and Inspector Smith were seeking advice about whether a civilian witness assisting a police investigation may be authorised to obtain an assumed identity under the *Crimes (Assumed Identities) Act 2004 (Vic)*.
18. I am unsure if it was mentioned in the meeting, but at some stage in preparing the advice on this matter I became aware that the civilian witness who was the subject of the request was Nicola Gobbo. I cannot recall how I became aware of this.
19. I recall being instructed that the civilian witness had provided a statement to police but that investigators needed to meet covertly with the witness to obtain further information and provide support to the witness. I recall being instructed that the security of the witness – who had refused entry into the witness protection program – was at risk and that an assumed identity would assist with making any necessary travel and accommodation arrangements for the witness.
20. At the time, I do not recall being told the nature of the investigation, the suspected crime, or the identity of the accused. I was not told that Ms Gobbo was providing information that she had obtained from a client, that the assistance she was providing was potentially a breach of privilege or of her obligations of confidentiality

to any client, or that she was a human source. Further, I did not have reason to suspect or believe that any of this was occurring.

21. Ms McIntyre and I provided written advice to AC Cornelius and Inspector Smith, which was to the effect that there was scope under the legislation for the witness to be authorised to obtain an assumed identity.

(3) Detail of when or how it became apparent to you that Ms Gobbo was or might be a human source.

22. It became apparent to me that Ms Gobbo was or might be a human source in around October 2011.

23. In September 2011, the VGSO Police Branch had briefed Gerard Maguire of counsel to assist Victoria Police with its response to a subpoena from Paul Dale, who was being prosecuted for allegedly giving false and misleading evidence to the Australian Crime Commission. A copy of the brief is at: VGSO.2000.1515.0426.

24. In about late September 2011, I recall being informed by Mr Maguire that he had located some very concerning information about Ms Gobbo's involvement with Victoria Police, and I recall that he provided a written memorandum about the issue. A copy of the memorandum is at: VGSO.5000.0051.0014 (28 September 2011); VGSO.5000.0051.0001 (4 October 2011).

25. I recall attending a meeting with Mr Maguire and members of Victoria Police. I cannot recall the details of what was said in the meeting or the substance of what Mr Maguire had found except for two pieces of information that have stuck in my memory:

- (a) Firstly, there was apparently a log entry that revealed Ms Gobbo had been tasked by a human source handler to seek an adjournment of a mention hearing in a matter in which she was acting for Tony Mokbel.
- (b) Secondly, there was a document recording an internal police discussion about a process for releasing Ms Gobbo from source handlers and to transfer her to investigators who would not know about her previous assistance as a human source. I believe this issue was referred to as a "break barrier".

26. I have been provided with copies of notes taken at meetings with Mr Maguire on 27 September 2011, 28 September 2011 and 4 October 2011: VGSO.5000.0051.0034, VGSO.2000.1515.0261, VGSO.2000.1515.0226-0228. I have also been provided with a memorandum of attendance from Mr Maguire that suggests I attended meetings on 22 September 2011, 28 September 2011, and 3 (and/or) 4 October 2011: VGSO.5000.0051.0075. These notes have not assisted me with recalling any other details on this matter beyond what I have set out above.

(4) Details of any other matters within your knowledge concerning: (a) the number of, and extent to which, cases may have been affected by the conduct of Nicola Gobbo as a human source; (b) the conduct of current and former members of Victoria Police in their disclosures about and recruitment, handling and management of Nicola Gobbo as a human source; (c) any other relevant matters.

27. There are five other matters I bring to the Commission's attention.

28. Firstly, I have been shown an email that was sent to me in March 2012, that contains a reference to "disclosures by F to Vicpol members (ICSD only) about [REDACTED] VGSO.5000.0033.0154. I do not recall what this email was about and I do not recall the identity of [REDACTED]

29. Secondly, in April 2014, I provided written advice to Victoria Police about whether a member of Victoria Police has a mandatory obligation to report their concerns about the welfare of a child of a witness under the *Children, Youth and Families Act 2005* (Vic). The advice was requested because Ms Gobbo was assessed to be at high risk of serious injury or death and yet she had rejected an offer of witness protection. A copy of the advice is at: VGSO.2000.1501.0143.

30. Thirdly, also in April 2014, I was asked whether I could provide some advice to Victoria Police about whether there may have been information obtained from Ms Gobbo that could have prejudiced a fair trial. A copy of a note I made when taking these instructions is at: VGSO.2000.1501.0162. In order to assess this question, I was provided with 353 pages of extracts from the undated coded logs of various source handlers of Victoria Police recording matters of interest to them arising from hundreds of discussions they had with Ms Gobbo.

31. I declined to provide the advice. Upon my review I observed that the material contained references to code words, abbreviations and other shorthand used by

handlers. This meant that I was not able to work out the identity of many of the people being discussed in the notes, nor was I able to ascertain whether Ms Gobbo was discussing information that might be confidential or privileged as I did not know who her clients were, nor was I familiar with the investigations or legal proceedings being discussed.

32. After I had reviewed the logs, by reason of the above, I wrote the following in a brief memorandum dated 23 April 2014:

We consider that only a person with a thorough understanding of the persons and information the subject of the log entries and of the criminal proceedings to which those persons were subject could possibly make an adequate assessment of whether the information disclosed to police by the source deserves any specific attention or justifies any specific treatment. For these reasons it is neither possible nor functionally appropriate the VGSO to attempt to perform that task.

In the circumstances, an option we suggest is to engage counsel to provide a vetting framework for police members with adequate knowledge of the source's material to identify whether there is information disclosed by the source that had the potential to interfere with justice in a particular case. In particular, whether client legal privilege or confidentiality may have been breached and whether this may have led to evidence being unlawfully, improperly or unfairly obtained and not disclosed before trial or whether an accused's defence or right to silence was improperly impugned in other ways by the source's provision of information to police.

33. A copy of the memorandum is at: VGS0.2000.1500.0002. I was not given an original copy of the logs. By prior arrangement with Victoria Police, the copy of the logs that I was provided was then destroyed for security reasons.
34. As a follow up to that issue, about a month later in May 2014, I was asked to organise some case law research on the consequence of lawyers informing on clients. A copy of my note recording those instructions is at: VGSO.2000.1501.0178.
35. Fourthly, in July 2014, I have seen a note where it is said that I assisted in the search of the VGSO Police Branch database for any advices provided to the Human Source Unit between 2005 and 2009: VGSO.2000.1501.0195. The note

says that I was unable to locate any advice. I do not now recall conducting that search.

36. Fifthly, in April 2015, I approved written advice to Victoria Police about whether proposed amendments to the Victoria Police Manual Policy Rules - Human Sources addressed the recommendations of the IBAC Report concerning the handling of Ms Gobbo and some other related matters. A copy of some notes I took and instructions I received at the time is at: VGSO.2000.1501.0006 and VGSO.2000.1501.0198. I then instructed Amy Galeotti, a solicitor in the VGSO Police Branch, to prepare the advice. A copy of the advice is at: VGSO.2000.1501.0211.
37. I would like to reserve the right to make a supplementary statement in the event that further documents relevant to the issues the subject of this statement are shown to me that I have not previously been shown, and which assist me in recollecting other matters that should be brought to the Commission's attention.

Dated: 24 September 2019



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Shaun Leon Le Grand

Shaun Le Grand – Curriculum Vitae

Qualifications Bachelor of Economics - Monash University (1991)
 Bachelor of Laws - Monash University (1992)
 Admission to legal profession - Supreme Court of Victoria (1993)

Present employment **Victoria Police** (June 2018 to present)
Discipline Inquiry Officer
 Conducting administrative inquiries under the Victoria Police Act into and determining charges of misconduct against police officers and protective services officers

Previous employment **Victorian Government Solicitor's Office** (March 2008 to June 2018)
Assistant Victorian Government Solicitor
Litigation & Dispute Resolution (Jan 2016 to Jun 2018)
 Leading a legal team providing litigation and dispute resolution services to departments, agencies and public office holders of the State of Victoria

Assistant Victorian Government Solicitor
Police Branch (Substantive - Feb 2011 to Dec 2015)
 (Acting - Aug 2010 to Feb 2011)
 Leading a legal team at Victoria Police headquarters providing independent legal advice and representation to the Chief Commissioner and by extension to the force's command and personnel in crime, intelligence, internal investigation, prosecution, corporate services and general duties units

Managing Principal Solicitor
Police Branch (Mar 2008 to Aug 2010)
 Team leader and manager, legal adviser and advocate

Deacons (Lawyers) (2005 to 2007)
Senior Associate
 Contract management advice and conduct of dispute resolution proceedings for construction contractors in relation to commercial construction and engineering projects

Victorian Bar (1995 to 2005)
Barrister
 Crime, personal injuries, tort, commercial and motor vehicle claims

Maddock, Lonie & Chisholm (Lawyers) (1992 to 1995)
Solicitor
 Litigation: personal injuries, commercial and motor vehicle claims

Royal Australian Navy (1997 to 2017)
Reserve Legal Officer
 Advice, advocacy and management roles in the Australian Defence Force – military discipline, investigations and administrative law

Document ID : VGSO.2000.1515.0426

VGSO.2000.1515.0426

IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE

IN THE MATTER OF PAUL DALE - DRIVER
TASKFORCE SUBPOENA

BETWEEN

Detective Senior Sergeant Boris Buick
Informant

- and -

Paul Dale
Respondent

**BRIEF TO COUNSEL TO
APPEAR**

Date: 8 November 2011

Counsel: Mr Gerard Maguire

Fee: \$250 per hour
\$2,500 daily fee (inclusive of first 5
hours preparation)

(All fees inclusive of GST)

Clerk: Foley's

Victorian Government Solicitor's Office
C/- Victoria Police Centre
Level 8 Tower 1
637 Flinders Street
Docklands Vic 3008
DX 210096 Melbourne

Tel:

Fax:

Ext:

Ref:

Louise Jarrett

Email:

Date: 8 September 2011

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VGSO.2000.1515.0426

IN THE MAGISTRATES' COURT AT MELBOURNE

IN THE MATTER OF PAUL DALE - DRIVER TASKFORCE SUBPOENA

BETWEEN

Detective Senior Sergeant Boris Bulck

Informant

- and -

Paul Dale

Respondent

MEMORANDUM TO COUNSEL

Counsel's instructor acts for the Chief Commissioner of Police in the above matter.

The Informant has instructed us that the Respondent will shortly be issuing the Chief Commissioner with a subpoena to produce documents to the Court. Victoria Police intends to object to providing the material requested in the subpoena. We request that you appear at the hearing of the matter to argue the objection.

Background

On 24 January 2011, Paul Dale was charged by the CDPP for a number of offences relating to the alleged giving of false and misleading evidence at ACC hearings. The contested committal hearing for the prosecution is set to commence on 7 November 2011.

It is envisaged that the forthcoming subpoena will request documents relating to the previous engagement, development and management of Nicola Gobbo as a witness by Victoria Police. Ms Gobbo is a key witness in the CDPP's case against the Respondent. Please refer to the attached Issue Cover Sheet at **Tab 1**.

The Respondent has previously issued similar subpoenas when he was being prosecuted for the murder of Terrence Hodson. Some of this material was subject to a PII claim, but this was left unresolved as at the time of Carl Williams' death and the withdrawal of the Hodson murder charge against the Respondent. In May 2011, the Respondent's legal representative (Tony Hargeaves) requested that the Respondent be entitled to use the material previously produced by the Chief Commissioner in compliance with those subpoenas. While Victoria Police agreed to this request in principle, the matter was left unresolved because the Respondent's legal representative refused to identify the specific documents he wanted to use, for the purpose of Victoria Police providing the same material to the CDPP. Please refer to the correspondence at **Tab 2**.

- 2 -

We are instructed that the subject matter of the forthcoming subpoena is operationally sensitive, in that it will expose sensitive police methodologies and potentially put Ms Gobbo's life at risk, and on this basis, the subpoena ought to be subject to a vigorous PII claim.

Key Dates

The matter is currently scheduled in the Magistrates' Court for a mention hearing on 6 October 2011, in anticipation of the Chief Commissioner objecting to production of documents captured by the forthcoming subpoena.

A meeting with D/Inspector Mick Frewen and your instructing solicitor is scheduled for 13 September 2011 at 3 pm, for the purpose of preparing for the forthcoming subpoena.

Contact

If you have any queries please contact Louise Jarrett of this office on 9247 6798.

Yours faithfully
Victorian Government Solicitor's Office



Shaun Le Grand
Assistant Victorian Government Solicitor

Date: 8 September 2011

Document ID : VGSO.5000.0051.0014

**IN THE MAGISTRATES COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION**

Draft

BUICK V DALE

MEMORANDUM OF ADVICE

1. I have been asked to prepare documents and to appear in relation to this matter, on behalf of the Chief Commissioner of Police.
2. The primary issue of concern relates to document disclosure and potential public interest immunity claims arising in relation to documents the subject of a proposed defence subpoena in the current proceedings. It is anticipated that the subpoena will be issued shortly but that it will be of limited scope.
3. As discussed below, the proposed subpoena follows on from an earlier subpoena ("the murder subpoena") issued prior to a committal hearing in respect of murder charges laid against Paul Dale and Rodney Collins for the murder of Terrance and Christine Hodson. Following the death of Carl Williams, the charge against Dale was withdrawn. However, disclosure issues in respect of some documents pursuant to that subpoena remained outstanding.

General background.

4. In late 2003 Paul Dale, David Miechel and Terrence Hodson were charged with drug trafficking and other offences arising out of the burglary of a house in Dublin Street, Oakleigh on 27 September of that year. At the time of their arrest and charging, Dale and Miechel were members of Victoria Police Major Drug Investigation Division ("MDID").

5. The Dublin Street house was to have been searched as part of a legitimate Victoria Police drug investigation. This investigation was being undertaken by Dale and Miechel. Hodson and Miechel were initially arrested close by the scene of the burglary. Subsequently, Hodson cooperated with police, indicated that he intended to plead guilty and made a statement implicating Dale and Miechel. Miechel refused to cooperate with investigating police.
6. On 16 May 2004, Terrence and Christine Hodson were murdered at their home in Kew. It is believed that the murder of Terrence Hodson was undertaken by Rodney Collins on the instructions of Paul Dale. It is also believed that Carl Williams acted as a middle man in the arrangement between Collins and Dale for the killing. As a result of the Hodsons death, the burglary and trafficking case against Dale collapsed and was withdrawn by the prosecution in October 2004.
7. The Hodsons murder was initially investigated by the Victoria Police homicide squad.
8. On 7 September 2005 an approach was made to the MDID by a confidential source who offered to supply information in relation to Antonios Mokbel.
9. In about 2002 Mokbel had been charged by members of both the former Victoria Police Drug Squad and the Australian Federal Police in respect of a variety of drug related offences. The Victorian charges related to drug trafficking whereas the Commonwealth charges related to drug importation and trafficking.
10. At the time there were difficulties in relation to the State charges against Mokbel as a number of drug squad members who were to give evidence, were themselves under investigation for drug related offences. This resulted in significant delays in hearing of the various Mokbel proceedings. Ultimately, a decision was made that the Commonwealth charges, which related to a drug importation from Mexico, would proceed first in time.

Significantly, at all relevant times the source was part of the Mokbel legal team in relation to both sets of charges.

11. Following the initial approach the source was managed for a number of years by the predecessor of the Source Development Unit ("the Unit"). Day to day management of the source was by handlers who tasked the source in respect of various investigations on behalf of MDID. The information and intelligence received was disseminated by way of information reports. A log was kept which recorded in a summary way details of the contacts between the source and handlers, some of the instructions given and other matters.
12. To date I have only reviewed the Unit's log. It may well be that there was prior contact and tasking of the source by members of MDID or other Victoria Police investigators. This issue has not been considered further as yet.
13. On 21 September 2005, the confidential source was debriefed by members of the Unit in respect of criminal activity being undertaken by Mokbel and his associates. At this time the source was acting in a legal capacity in relation both the Mokbel and other of his associates. There was a follow up debrief on 24 October 2005 in relation to the same targets.
14. Throughout 2006 there was extensive and continuing contact between the source and unit handlers during which information was provided in respect of various targets and persons of interest in relation to drug investigations. The source continued to act as part of the legal team in respect of a number of the targets of investigation. It is also apparent from the log that the source was tasked from time to time in relation to various other investigative targets.
15. The information provided by the source was of very high value. Thus, identification of the source would have led to severe retribution.

16. During 2006 there also appears to have been significant speculation about the role being played by the source by various persons charged with serious drug trafficking offences and their lawyers. Included amongst this group was Tony Hargraves, the solicitor acting for Paul Dale. He was actively canvassing this issue in mid to late October 2006. Furthermore, complaints about the source were made to professional conduct bodies by Carl and Roberta Williams and Zarah Garde-Wilson. These complaints were dismissed.
17. It may also have been the case that during 2006 the sources' handlers were also receiving and passing on information not only in relation to ongoing criminal activity by Mokbel and others but also as to the manner in which their respective defences were being conducted. There is a suggestion that on at least one occasion handlers gave the source instructions concerning whether an adjournment application on behalf of Mokbel might be made.
18. Also during 2006 the Unit made payments to or on behalf of the source. These were referable to the assistance being provided at that time to the Unit and the information being passed on to investigators. These payments continued until January 2009.
19. During 2006 a number of murder charges were laid against Carl Williams. Later that year he indicated a willingness to co-operate with Police and provide information and evidence in relation to the Hodsons murder.
20. By April 2007 Carl Williams had agreed to cooperate fully with Victoria Police in relation to a number of matters including the investigation of the Hodsons murder. He ultimately made three statements which detailed his involvement with Dale and set out Dale and Collins' roles in the murders.

Assistance in relation to Paul Dale.

21. On 12 February 2007 the source was targeted to meet with Paul Dale as part of the Hodsons murder investigation. As noted in the Unit log, the instruction given to the source

by her handlers was that "any meeting was to be in business hours and consistent with professional contact."

22. In April 2007 the Petra taskforce was formed and took over the investigation of the Hodsons murder.
23. Thereafter, although it is not clear from the log, it would appear that the source had a number of meetings with Paul Dale. On 21 May 2007 the source was debriefed in relation to Paul Dale, Dublin Street and a variety of other matters. The information obtained was passed on by the Unit to Petra investigators.
24. On 24 May 2007 the source offered to wear a recording device in relation to further meetings with Dale. I believe that this subsequently occurred.
25. By this time it is apparent from the log that the Unit's dealings with the source were becoming fraught. A number of handlers had been involved and because of particular activity which had occurred, management were concerned that the source may in fact be engaging in illegal activities such as drug trafficking, without an indemnity. Handlers were also concerned about the constant risk to the source of identification as a police informant.
26. By 6 August 2007, a decision was made that the source would only be deployed for intelligence gathering purposes and without specific tasking. This was a significant change in the nature of the deployments to that date and appears to have been met with some resistance by the source. Information continued to be received by the Unit on a regular basis but was not disseminated for immediate investigative action due to risk of disclosure of the source.
27. On 26 February 2008 a decision was made that the source would be informally interviewed by investigators from the Petra taskforce. There was consideration of a possible handover of management of the source to the taskforce.

The current charges

33. On 7 March 2007 and 26 November 2008 Dale was examined by the Australian Crime Commission ("ACC") in respect of the Hodsons murders. During the hearings he was asked questions concerning various matters contained in the 3 witness statements made by Carl Williams. During the hearings he was represented by Tony Hargraves who advised him not to speak to the source.
34. Following the ACC hearing, Dale spoke to the source. That conversation was recorded. Dale inferentially confirmed the truth of the Williams' statements. I have been instructed that continuity of the recording is not an issue as it was activated and deactivated in police presence.
35. On *13 February* 2009 Dale was charged with the murder of Terence Hodson. A committal in respect of that charge commenced on *9 March* 2009. The source was listed as a witness and relevant statements provided.
36. On the 19th of April 2010, during an adjournment of the Dale committal proceedings, Carl Williams was murdered at Barwon gaol. Carl Williams was to give evidence in the committal and linked Dale to Rodney Collins, the person contracted by Williams to undertake the Hodsons murder on behalf of Dale.
37. On *28 January* 2011 Dale was charged by Det. Snr. Sgt Boris Buick of Victoria police with various charges arising from the evidence given by him to the ACC. It is those matters which give rise to the current proceedings. Once again the source was listed as a witness in respect of that prosecution and relevant statements provided. These confirmed the recording and that the source was not acting as Dale's lawyer at the time the recording was made.

28. On 4 March 2008 Unit handlers gave the source an instruction not to offer assistance in gathering evidence on behalf of the Petra taskforce. On 6 March 2008 details of the discussions between the Unit member and Petra taskforce investigators were logged. Later that month Petra taskforce investigators were shown documents by the source which had been received from or compiled in respect of Dale. It is not clear whether copies were provided or taken.
29. On 3 June 2008 the source reported contact with Dale which had occurred. Thereafter further activity occurred in relation to the management of the source by the Unit. This included the provision of further financial rewards and assessment of the information provided in respect of Dale and Carl Williams.
30. On 30 November 2008 an important meeting occurred between the source and Dale. It was recorded and the recording provided to Petra taskforce investigators.
31. Following this meeting that the log notes consideration being given to a "break barrier strategy" being put in place having regard to the source's change in status to that of a possible witness. This resulted in a meeting on 16 December 2008 which noted the change in status and the source's motive for co-operation and assistance.
32. At about this time the matter was obviously considered at a very high level within Victoria Police Command. However, it was only on 8 January 2009 that a decision was made that the Unit cease management of the source. Deactivation occurred on 12 January 2009 with a direction that subsequent meetings with Unit members were to be recorded. A number of further contacts did occur and the recordings made have been transcribed by the Briars taskforce.

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

I.E. _____ Date 10/7/2014
 File Number _____ Start _____ am/pm
 Telephone Call _____ Stop _____ am/pm
 Conference _____ Venue _____ Minutes _____

Court attendance before _____

Drafting documents _____

Research _____

Travel Database search - (as per request of Monique Swain)

Advice provided to Human Source Unit
between 2005 and 2009

"Nicola Gobbo"

"3838"

"police informer"

Database search of Knowledge, Legacy
did not reveal any advice

Raymond Loh does not recall an advice
being provided

Shaun Le Grand assisted in the database
search but was unable to locate any advice

(Signed)

Document ID : VGSO.2000.1501.0006

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

FILE _____ Date _____ / _____ / 201

TT	TF
AI	AO

Author _____

Time _____

VPM P ss 4.5 + 4.6 - to occur
see draft

~~Confidential~~ ~~Must be legal~~

⑤ Policy re LPP/CI. Legal advice. ss 4.6

⑥ Policy re HS i conf^{prof} duties - conf^{prof} ~~advice~~ ~~ethics~~ ~~etc~~

⑦ Legal advice of prof. duty. => 4.6 legal advice

⑧ Not actively seek info. to prof. duty. => not seek.

1(e) - wording for LSD => not received?!

Policy Framework

Issues Item 10 - source to witness transition programs.

Non-existent : Containment of information that is LPP

Risk Assmt : 5.6.22 - 10 : seek legal advice. a

" D seek advice of from HIMU ~~where~~ "legally privileged
as confidential ~~and from~~ ~~professional~~ ~~exception~~

Info might be "Zones" ~~attained~~

* child. Mand. report.

Document ID : VGSO.2000.1501.0198

Pre-trial discovery.

38. The question of pre-trial discovery of documents in the current proceeding has been adjourned until 6 October 2011. Arrangements have been made for the defence solicitors to be released from an undertaking in respect of documents provided to them pursuant to murder subpoena referred to above. However, in addition to other matters the murder subpoena also sought materials including -
- “all audio tapes, video tapes, information reports, notes, transcripts, diary entries, day book entries and all other documents (whether in written or electronic form) concerning any discussion, interview, debriefing or conversation with any witness in this investigation.”
39. The investigation referred to is the murder investigation in respect of the Hodsons.
40. The approach to disclosure taken to the murder subpoena was to only provide documents created by Petra taskforce investigators. A claim of public interest immunity was made in relation to the broader classes of documents sought and in particular documents created by the Unit insofar as they related to the murder investigation. The basis for this decision was that that a “break barrier” existed prior to any targeting of the confidential witness in respect of Dale and in particular in respect of the Hodson murders. It was to be contended that all the documents held by the Unit were the subject of public interest immunity based on witness security and informer identification.
41. However, at the time that the murder committal proceedings were withdrawn, compliance with the murder subpoena had not been completed. Dale's solicitor had been told that documents existed which fell into the category of materials sought set out above but that a claim of public interest immunity existed in respect of them. None of these documents had been reviewed.

42. It was in this context and having regard to the likelihood of a subpoena in the current proceedings, which relate to very different charges, that a limited review of the documents held by the Unit has taken place. A similar review was undertaken in respect of documents held by the Witness Protection Unit. No review of the Petra taskforce documents, now held by the Driver taskforce, has occurred and I do not know what if any material pre-dating the involvement of the Unit exists.
43. Dale's solicitor has stated that whilst he proposes to issue a subpoena in the current proceedings, he is otherwise content with the disclosure which has occurred in relation to the murder subpoena and will confine any request for additional material to any communications between the police and the source since the murder committal. This position may change once the defence appreciate that compliance with the murder subpoena was never completed.

The Dale defence

44. Dale's defence is that at all times that he was speaking to the source it was on an occasion which attracted legal professional privilege. Legal Professional privilege is now codified in s.118 and 119 of the **Evidence Act 2008**. S.117 of the Act defines client to include "a person or body who engages a lawyer to provide legal services or who employs a lawyer (including under a contract of service)." The source denies that Dale was ever a client and says that only a personal relationship existed between them.
45. Furthermore, the circumstances of the recording itself and the fact that Hargraves acted for Dale during the ACC hearings strongly suggest that there was no engagement of the source as a lawyer to provide legal services such as would give rise the the requisite relationship. Rather, the recording suggests that the disclosure which occurred was not as required by the Act and at common law, "for the dominant purpose of the lawyer ... providing legal advice to the client" or for " the dominant purpose of the client being provided with

professional legal services relating to an Australian or overseas proceeding (including a proceeding before the Court) or an anticipated or pending Australian or overseas proceeding, in which the client is or may be, or was or might have been, a party.”

46. However, it is clear that the “break barrier” referred to above did not come into existence until about 18 months after the confidential witness was first targeted in respect of Dale. Furthermore, that targeting was specifically in relation to the murder of the Hodsons.
47. It may be contended that the instruction given at the time of the initial targeting leaves open the contention by the defence that the totality of the dealings between Dale and the source attract a claim of legal professional privilege. The instruction given was that “any meeting was to be in business hours and consistent with professional contact.” Whilst such a construction is likely to fail, in the context of the current proceedings it cannot be dismissed out of hand. It remains an issue which it is open to the defence to explore.

Release of the material.

48. In my view some limited disclosure of material from the Unit may be required, in particular the initial instruction and any information reports or other materials concerning that initial tasking. The date on which the instructions were given would also need to be disclosed. At the very least the matter will need to be considered by the prosecutor to determine whether redacted copies of the relevant documents should be provided to the defence as a matter of fairness.
49. The appropriateness of making this material available can be tested in a number of ways. First, it might be asked whether the defence has a legitimate forensic purpose in obtaining access to such a document. In my view the answer has to be yes, based both on the content of the document itself and also the implications for the source's credit insofar as it is said that no relationship of lawyer and client existed.

50. Secondly, even if public interest immunity was claimed in respect of the document, the issue remains whether its disclosure might be necessary so as assist in establishing the innocence of the defendant. A Magistrate or Judge may accept that it should be released despite the fact that it would compromise informer identification.
51. A number of other considerations also arise in the context of the impending committal -
- (a) in the absence of disclosure, the source may be induced to provide inaccurate or even false evidence based on the "break barrier" scenario and a contention that there was no targeting of Dale prior to the involvement of Petra taskforce investigators;
 - (b) in the event of the source being asked questions about the first contact with Dale in respect of the murder investigation a claim of public interest immunity will need to be made. This will have the effect of confirming in the minds of interested persons that the source was an informer at a time prior to the creation of the Petra taskforce
 - (c) Furthermore, any public interest immunity claim would have to be made on the basis of informer identification and witness security which, if made publicly, would defeat the purpose of making the claim. The Magistrate would have to be provided with confidential material in support of the claim. Such material would have to set out the circumstances in which the source was registered and thereafter deployed not only in respect of Dale but also, potentially, in respect of other persons who were clients.
 - (d) However, disclosure of the material relating to the targeting of Dale, will confirm that as at February 2007 the source was providing assistance to the Unit.
52. The source is not a participant in any witness protection program. Victoria police have not been able to persuade the source to enter their program. Whilst an assessment is to be made by [REDACTED] it is not likely that the source will co-operate. As a result, I have been instructed that if identified as a long-

term police source the safety risks for the source will be extreme.

53. A further complication is the professional role undertaken by the source. Once identified as acting as an informer from February 2007 it is likely that the defence will press to obtain documents in relation to all other dealings between the police and the source on the basis that it will show that the source was providing legal services and advice to other targets at the same time as information was being provided to police. This would form the basis of a credit attack as well as bolstering the proposition that the recorded conversation with Dale was on an occasion which attracted legal professional privilege.
54. If the role of the source were to be fully exposed there is also a possibility that persons such as Mokbel, who was convicted in absentia in March 2006, would seek to challenge their convictions on the basis that it was improperly obtained. It is difficult to predict how such an issue might be raised or played out but there might be an attempt to raise the issue in a venue such as the Court of Appeal. It might also have a collateral effect in relation to the current sentencing of Mokbel for drug trafficking offences after he fled the jurisdiction.

Recommendations.

55. I suggest that these issues be raised with senior management within Victoria Police for their consideration in the context of the current committal which is due to commence in November 2011. I suggest that urgent consideration be given to providing a copy of the relevant log entries to the prosecutor for the purpose of determining what if any disclosure is required in the interests of fairness. This may require relevant information reports or members diary entries to also be obtained and reviewed.
56. If there are any questions arising out of this advice I will be happy to advise further or discuss these in conference should that be required.

Gerard J. Maguire,
Winneke Chambers,
28 September 2011.

28 September 2011

Memorandum of Advice

Page - 13

VGSO.5000.0051.0014

Document ID : VGSO.5000.0051.0001

**N THE MAGISTRATES COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION**

BUICK

v

DALE

MEMORANDUM OF ADVICE

1. I have been asked to prepare documents and to appear in relation to this matter, on behalf of the Chief Commissioner of Police.
2. The primary issue of concern relates to document disclosure and potential public interest immunity claims arising in relation to documents the subject of any proposed defence subpoena in the current proceedings.
3. As discussed below, any subpoena follows on from an earlier subpoena ("the murder subpoena") issued prior to a committal hearing in respect of murder charges laid against Paul Dale and Rodney Collins for the murder of Terrance and Christine Hodson. Following the death of Carl Williams, the charge against Dale was withdrawn. However, disclosure issues in respect of some documents pursuant to that subpoena remained outstanding.

General background.

4. In late 2003 Paul Dale, David Miechel and Terrence Hodson were charged with drug trafficking and other offences arising out of the burglary of a house in Dublin Street, Oakleigh on 27 September of that year. At the time of their arrest and charging, Dale and

Micchel where members of Victoria Police Major Drug Investigation Division ("MDID").

5. The Dublin Street house was to have been searched as part of a legitimate Victoria Police drug investigation. This investigation was being undertaken by Dale and Micchel. Hodson and Micchel were initially arrested close by the scene of the burglary. Subsequently, Hodson co-operated with police, indicated that he intended to plead guilty and made a statement implicating Dale and Micchel. Micchel refused to cooperate with investigating police.
6. On 16 May 2004, Terrence and Christine Hodson were murdered at their home in Kew. It is believed that the murder of Terrence Hodson was undertaken by Rodney Collins on the instructions of Paul Dale. It is also believed that Carl Williams acted as a middle man in the arrangement between Collins and Dale for the killing. As a result of the Hodsons death, the burglary and trafficking case against Dale collapsed and was withdrawn by the prosecution in October 2004.
7. The Hodsons murder was initially investigated by the Victoria Police homicide squad.
8. On 7 September 2005 an approach was made to the MDID by a confidential source who offered to supply information in relation to Antonios Mokbel.
9. In about 2002 Mokbel had been charged by members of both the former Victoria Police Drug Squad and the Australian Federal Police in respect of a variety of drug related offences. The Victorian charges related to drug trafficking whereas the Commonwealth charges related to drug importation and trafficking.
10. At the time there were difficulties in relation to the State charges against Mokbel as a number of drug squad members who were to give evidence, were themselves under investigation for drug related offences. This resulted in significant delays in hearing of the various Mokbel proceedings. Ultimately, a decision was made that the Commonwealth

charges, which related to a drug importation from Mexico, would proceed first in time.

Significantly, at all relevant times the source was part of the Mokbel legal team in relation to both sets of charges.

11. Following the initial approach the source was managed for a number of years by the predecessor of the Source Development Unit ("the Unit"). Day to day management of the source was by handlers who tasked the source in respect of various investigations on behalf of MDID. The information and intelligence received was disseminated by way of information reports. A log was kept which recorded in a summary way details of the contacts between the source and handlers, some of the instructions given and other matters.
12. To date I have only reviewed the Unit's log. It may well be that there was prior contact and tasking of the source by members of MDID or other Victoria Police investigators. This issue has not been considered further as yet.
13. On 21 September 2005, the confidential source was debriefed by members of the Unit in respect of criminal activity being undertaken by Mokbel and his associates. At this time the source was acting in a legal capacity in relation both the Mokbel and other of his associates. There was a follow up debrief on 24 October 2005 in relation to the same targets.
14. Throughout late 2005 and 2006 there was extensive and continuing contact between the source and unit handlers during which information was provided in respect of various targets and persons of interest in relation to drug investigations. Often these contacts were several times each week. The source continued to act as part of the legal team in respect of a number of the targets of investigation. It is also apparent from the log that the source was tasked from time to time in relation to other investigative targets as well as the Mokbel syndicate.

15. The information provided by the source was of very high value. Thus, identification of the source would have led to severe retribution.
16. During 2006 there also appears to have been significant speculation about the role being played by the source by various persons charged with serious drug trafficking offences and their lawyers. Included amongst this group was Tony Hargraves, the solicitor acting for Paul Dale. He was actively canvassing this issue in mid to late October 2006. Furthermore, complaints about the source were made to professional conduct bodies by Carl and Roberta Williams and Zarah Garde-Wilson. These complaints were dismissed.
17. It may also have been the case that during 2006 the sources' handlers were also receiving and passing on information not only in relation to ongoing criminal activity by Mokbel and others but also as to the manner in which their respective defences were being conducted. There is a suggestion that on 7 April 2006, handlers gave the source instructions concerning whether an adjournment application on behalf of Mokbel might be made.
18. Also during 2006 the Unit made payments to or on behalf of the source. These were referable to the assistance being provided at that time to the Unit and the information being passed on to investigators. These payments continued until January 2009.
19. During 2006 a number of murder charges were laid against Carl Williams. Later that year he indicated a willingness to co-operate with Police and provide information and evidence in relation to the Hodsons murder.
20. By April 2007 Carl Williams had agreed to cooperate fully with Victoria Police in relation to a number of matters including the investigation of the Hodsons murder. He ultimately made three statements which detailed his involvement with Dale and set out Dale and Collins' roles in the murders.

Assistance in relation to Paul Dale.

21. On 27 February 2007 the source was targeted to meet with Paul Dale as part of the Hodsons murder investigation. As noted in the Unit log, the instruction given to the source by her handlers was that "any meeting was to be in business hours and consistent with professional contact."
22. In April 2007 the Petra taskforce was formed and took over the investigation of the Hodsons murder.
23. Thereafter, although it is not clear from the log, it would appear that the source had a number of meetings with Paul Dale. On 21 May 2007 the source was debriefed in relation to Paul Dale, Dublin Street and a variety of other matters. The information obtained was passed on by the Unit to Petra investigators.
24. On 24 May 2007 the source offered to wear a recording device in relation to further meetings with Dale. I believe that this subsequently occurred.
25. By this time it is apparent from the log that the Unit's dealings with the source were becoming fraught. A number of handlers had been involved and because of particular activity which had occurred, management were concerned that the source may in fact be engaging in illegal activities such as drug trafficking, without an indemnity. Handlers were also concerned about the constant risk to the source of identification as a police informant.
26. By 6 August 2007, a decision was made that the source would only be deployed for intelligence gathering purposes and without specific tasking. This was a significant change in the nature of the deployments to that date and appears to have been met with some resistance from the source. Information continued to be received by the Unit on a regular basis but was not disseminated for immediate investigative action due to risk of disclosure of the source.

27. On 26 February 2008 a decision was made that the source would be informally interviewed by investigators from the Petra taskforce. There was consideration of a possible handover of management of the source to the taskforce.
28. On 4 March 2008 Unit handlers gave the source an instruction not to offer assistance in gathering evidence on behalf of the Petra taskforce. Later that month Petra taskforce the source informed handlers that Petra investigators had been shown documents by the source which had been received from or compiled in respect of Dale. It is not clear whether copies were provided or taken.
29. On 3 June 2008 the source reported contact with Dale which had occurred. Thereafter further activity occurred in relation to the management of the source by the Unit. This included the provision of further financial rewards and assessment of the information provided in respect of Dale and Carl Williams.
30. On 30 November 2008 an important meeting occurred between the source and Dale. On 5 December 2008, following this meeting, the log notes consideration being given to a "break barrier strategy" being put in place having regard to the source's change in status to that of a possible witness. This resulted in a meeting on 16 December 2008 which noted the change in status and the source's motive for co-operation and assistance. In the interim, on 7 December 2008 a meeting with Dale was recorded by the source and the recording provided to Petra taskforce investigators.
31. At about this time the matter was obviously considered at a very high level within Victoria Police Command. However, it was only on 8 January 2009 that a final decision was made that the Unit cease management of the source. Deactivation occurred on 12 January 2009 with a direction that all subsequent meetings with Unit members were to be recorded. A number of further contacts did occur and the recordings made have been transcribed by the Briars taskforce.

The current charges

32. On 7 March 2007 and 26 November 2008 Dale was examined by the Australian Crime Commission ("ACC") in respect of the Hodsons murders. During the hearings he was asked questions concerning various matters contained in the 3 witness statements made by Carl Williams. During the hearings he was represented by Tony Hargraves who advised him not to speak to the source.
33. Following the ACC hearing, Dale spoke to the source. That conversation was recorded. Dale inferentially confirmed the truth of the Williams' statements. I have been instructed that continuity of the recording is not an issue as it was activated and deactivated in police presence.
34. On February 2009, Dale was charged with the murder of Terence Hodson. A committal in respect of that charge commenced with an initial hearing on 9 March 2009. The source was listed as a witness and relevant statements provided as part of the hand-up brief.
35. On 19 April 2010, during an adjournment of the Dale committal proceedings, Carl Williams was murdered at Barwon gaol. Carl Williams was to give evidence in the committal and linked Dale to Rodney Collins, the person contracted by Williams to undertake the Hodsons murder on behalf of Dale.
36. On 28 January 2011 Dale was charged by Det. Snr. Sgt Boris Buick of Victoria police with various charges arising from the evidence given by him to the ACC. It is those matters which give rise to the current proceedings. Once again the source was listed as a witness in respect of that prosecution and relevant statements provided. These confirmed the recording and that the source was not acting as Dale's lawyer at the time the recording was made.

Pre-trial discovery.

37. The question of pre-trial discovery of documents in the current proceeding was adjourned until 6 October 2011. Recently that hearing has been vacated. This followed an arrangement whereby the defence solicitors to be released from an undertaking in respect of documents provided to them pursuant to the murder subpoena and an agreement that the prosecution would provide any notes of further contact between investigators and the source (subject to public interest claims) since the murder committal ended.
38. However, in addition to other matters the murder subpoena also sought materials including - "all audio tapes, video tapes, information reports, notes, transcripts, diary entries, day book entries and all other documents (whether in written or electronic form) concerning any discussion, interview, debriefing or conversation with any witness in this investigation."
39. The investigation referred to is the murder investigation in respect of the Hodsons.
40. The approach to disclosure taken to the murder subpoena was to only provide documents created by Petra taskforce investigators. A claim of public interest immunity was made in relation to the broader classes of documents sought and in particular documents created by the Unit insofar as they related to the murder investigation. The basis for this decision was that that an effective "break barrier" existed prior to any targeting of the source in respect of Dale and in particular in respect of the Hodson murders. It was to be contended that all the documents held by the Unit were the subject of public interest immunity based on witness security and informer identification.
41. However, at the time that the murder committal proceedings were withdrawn, compliance with the murder subpoena had not been completed. Dale's solicitor had been told that documents existed which fell into the category of materials sought set out above but that a

claim of public interest immunity existed in respect of them. None of these documents had been reviewed.

42. It was in this context and having regard to the likelihood of a subpoena in the current proceedings, which relate to very different charges, that a limited review of the documents held by the Unit has taken place. A similar review was undertaken in respect of documents held by the Witness Protection Unit. No review of the Petra taskforce documents, now held by the Driver taskforce, has occurred and I do not know what if any material pre-dating the involvement of the Unit exists.
43. Whilst Dale's solicitor has stated that he is content with the disclosure which has occurred in relation to the murder subpoena and will confine any request for additional material to any communications between the police and the source since the murder committal, this position may change once the defence appreciate that compliance with the murder subpoena was never completed.

The Dale defence

44. Dale's defence is that at all times that he was speaking to the source it was on an occasion which attracted legal professional privilege. Legal Professional privilege is now codified in s.118 and 119 of the **Evidence Act 2008**. S.117 of the Act defines client to include "a person or body who engages a lawyer to provide legal services or who employs a lawyer (including under a contract of service)." The source denies that Dale was ever a client and says that only a personal relationship existed between them.
45. Furthermore, the circumstances of the recording itself and the fact that Hargraves acted for Dale during the ACC hearings strongly suggest that there was no engagement of the source as a lawyer to provide legal services such as would give rise the the requisite relationship. Rather, the recording suggests that the disclosure which occurred was not as required by

the Act and at common law, “for the dominant purpose of the lawyer ... providing legal advice to the client” or for “ the dominant purpose of the client being provided with professional legal services relating to an Australian or overseas proceeding (including a proceeding before the Court) or an anticipated or pending Australian or overseas proceeding, in which the client is or my be, or was or might have been, a party.”

46. However, it is clear that the “break barrier” referred did above not come into existence until about 18 months after the source was first targeted in respect of Dale. Furthermore, that targeting was specifically in relation to the murder of the Hodsons.
47. It might be contended that the instruction given by handlers to the source at the time of the initial targeting, leaves open the contention by the defence that the totality of the dealings between Dale and the source attract a claim of legal professional privilege. The instruction given was that “any meeting was to be in business hours and consistent with professional contact.” Whilst such a construction is likely to fail, in the context of the current proceedings it cannot be dismissed out of hand. It remains an issue which it is open to the defence to explore.

Release of the material.

48. In my view some limited disclosure of material from the Unit may be required, in particular the initial instruction and any information reports or other materials concerning that initial tasking. The date on which the instructions were given would also need to be disclosed. At the very least the matter will need to be considered by the prosecutor to determine whether redacted copies of the relevant documents should be provided to the defence as a matter of fairness.
49. The appropriateness of making this material available can be tested in a number of ways. First, it might be asked whether the defence has a legitimate forensic purpose in obtaining

access to such a document. In my view the answer has to be yes, based both on the content of the document itself and also the implications for the source's credit insofar as it is said that no relationship of lawyer and client existed.

50. Secondly, even if public interest immunity was claimed in respect of the document, the issue remains whether its disclosure might be necessary so as assist in establishing the innocence of the defendant. A Magistrate or Judge may accept that it should be released despite the fact that it would compromise informer identification.
51. A number of other considerations also arise in the context of the impending committal -
- (a) in the absence of disclosure, the source may be induced to provide inaccurate or even false evidence based on the "break barrier" scenario and a contention that there was no targeting of Dale prior to the involvement of Petra taskforce investigators;
 - (b) in the event of the source being asked questions about the first contact with Dale in respect of the murder investigation a claim of public interest immunity will need to be made. This will have the effect of confirming in the minds of interested persons that the source was an informer at a time prior to the creation of the Petra taskforce
 - (c) Furthermore, any public interest immunity claim would have to be made on the basis of informer identification and witness security which, if made publicly, would defeat the purpose of making the claim. The Magistrate would have to be provided with confidential material in support of the claim. Such material would have to set out the circumstances in which the source was registered and thereafter deployed not only in respect of Dale but also, potentially, in respect of other persons who were clients.
 - (d) However, disclosure of the material relating to the targeting of Dale, will confirm that as at February 2007 the source was providing assistance to the Unit.

52. The source is not a participant in any witness protection program. Victoria police have not

been able to persuade the source to enter their program. Whilst an assessment is to be made by [REDACTED] it is not likely that the source will co-operate. As a result, I have been instructed that if identified as a long-term police source the safety risks for the source will be extreme.

53. A further complication is the professional role undertaken by the source. Once identified as acting as an informer from February 2007 it is likely that the defence will press to obtain documents in relation to all other dealings between the police and the source on the basis that it will show that the source was providing legal services and advice to other targets at the same time as information was being provided to police. This would form the basis of a credit attack as well as bolstering the proposition that the recorded conversation with Dale was on an occasion which attracted legal professional privilege.
54. If the role of the source were to be fully exposed there is also a possibility that persons such as Mokbel, who was convicted in absentia in March 2006, would seek to challenge their convictions on the basis that it was improperly obtained. It is difficult to predict how such an issue might be raised or played out but there might be an attempt to raise the issue in a venue such as the Court of Appeal. It might also have a collateral effect in relation to the current sentencing of Mokbel for drug trafficking offences after he fled the jurisdiction.

Recommendations.

55. I suggest that these issues be raised with senior management within Victoria Police for their consideration in the context of the current committal which is due to commence in November 2011. I suggest that urgent consideration be given to providing a copy of the relevant log entries to the prosecutor for the purpose of determining what if any disclosure is required in the interests of fairness. This may require relevant information reports or members diary entries to also be obtained and reviewed.

56. If there are any questions arising out of this advice I will be happy to advise further or discuss these in conference should that be required.

Gerard J. Maguire,
Winneke Chambers,
4 October 2011.

Document ID : VGSO.5000.0051.0034

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE

1119460

Date

27, 9, 2011



Author

GxE

Time

0930

Good Magazine

GxE

LET

SLE

Sept 03 - Dublin St

Oct 04 - Schedule committed

⇒ Claps w/D

Apr 07 - William Scott

⇒ Peter James

Sept 05 - F S/T ADID

- Source development unit

⇒ debriefed on Tony Makbul

⇒ acting for TM

2006 - Adj issue

- S/T Milad / debriefed

May 06 - \$15,000 in car at prison

N Complaints - CW

- EW

- SG-W

Oct 06 - Haywood's raised

concern over his knowledge
of F present to client
to work with police

Oct 06 - gave appt papers for F

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

FILE _____

3

Date / / 201

TT	TF
AI	AO

Author _____

Time _____

where to ?

Written advice from GP.

*1100 - PL call Paul Sheridan
GM s/t - advise Mich
Inman / Bois Buish
- yes.*

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

FILE _____

Date 27/9/2011

TT	TF
AI	AO

Author GXE

Mick Frewin

Time 1135

Available for meeting?

1400 today

1400 tomorrow

Document ID: VGSO.2000.1515.0261

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE Dale subpoena. Date 28 / 9 / 2011

TT	TF
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Author LEJ

AI	AO
----	----

meeting with Gerard Mayure, Paul Sheridan. Time ~~1:30~~ 1:50-

Bons Bulch, Mick Frewen, G&F & SLG.

am:

- Defence entitled to ICS, diary notes relevant to Dale tasking
- Likely they will ask for docs relating to other contacts with police where she may be informing on clients.

Difficult to argue PII & see how it falls.

- Grey area of when was she was a source & when she was a witness. What can you argue as Wit protect^{ions} issues or Informer privilege?

Instruction

Jarvie - clear that informer will be given up if evidence goes to ~~the~~ demonstrate ^(A) innocence

Problem is she is a lawyer - difficult to hide her

involvement with other clients might not

- just be able to isolate F's involvement with Dale.

whole thing unravels if they find out she was a source since 2007

Messy - cant predict what will happen e.g effect on Mokbel

PS - This needs to go to the prosecution. Then ^{we} will deal with what to do next. What choices are left.

A lot of probs will evaporate if she goes in the program.

This ~~may~~ may force her hand to go in Program if she knows Police will out her as a source ^{re} Dale.

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE _____ Date _____ / _____ / 201

IT	TF
AI	AO

Author _____

Time _____

Either have to mount PII argument which demonstrates
her co-op w police

If mag sees the docs there is a risk he will decide
defence should see the docs.

lm- suggestion that it goes to Geoff Pope
Graham Ashton.

O'Connor to review log to make sure GMI's memo
is correct.

Meeting - monday morning after ~~10am~~
10am.

Document ID : VGSO.2000.1515.0226

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE Dale subpoena Date 4 / 10 / 2011

TT	TF
AI	AO

Author LEG

Time 2pm - 3pm

Meeting with Bonnie Bluck, Mick Frewer, Gerard Maguire, SLA, GAE

John O'Connor to him - advise details re apart from a few days (HSLA)
F giving info daily / 3/4 times a week.

Money constraints for Dale.

ISSUE:-

Q: Does the log portion have to be disclosed to Krista & defence?

If KB says NO, then have to decide whether to give it to Defence.

Jarvis - informer will be given up if vital to Defence.

Defence will say she had conducted duties - suggest she has done that for Dale - no diff' to other clients Acting for him & talking on him

BB - F refused to act for Dale when he was in prison on burglary charges. She was acting for Andrew Hodson (sep matter - drug related)

F maintains she didn't act for him ever after she told him she couldn't.

LOG goes directly to F's credit & court may order further disclosure of breaching other prof relationships

MF - need to put some context around talking

GAE - legal issue - admissibility of tape - may be able to done on voir dire

MF - tape recording speaks for itself

G.M - ask prosecutor if log is relevant & should be disclosed to @.

Document ID : VGSO.2000.1515.0227

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

FILE _____ Da _____

TT	TF
AI	AO

Au _____

Ti _____

VGSO advice -
 must disclose

3 issues - NO break barrier
 tasked for Dale in 2007
 log entry re professional contact

(F)

mergers as being dealt w by HSU & MBID (& in relation to Dale?) prior to Feb 2007
 specifically tasked in Feb 2007 - IR's & diary entries need to be disclosed as well.
 She will be asked Qs about being on board from that date? e.g. when did she start informing on Dale & others? When?

CAT - forecast another subpoena will follow disclosure of log - they will want to know what else is out there that wasn't processed under last subpoena when committal fell over.

Advice - falls under disclosure obligations

GM - strongly believe he will fail on LPP but end of the day - have to disclose the doc

CAT VGSO & GM advice you need to disclose the document & any subsidiary docs related to log.

MF - we disclose it & offer explanations provide context around it.

BB - if we have to disclose then need to pull prosecution.

Document ID : VGSO.2000.1515.0228

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE _____ Date _____ / _____ / 201
 TT TF _____ Author _____
 AI AO _____ Time _____

Am - q: what are the consequences of disclosure?
 Safety of F
 Integrity of HS program

SLC - well and truly over the relevance bar.
 Already talking about how it is damaging -
 clearly relevant.

BB - doesn't think log is relevant.

Am - BB view is based on functioning break-barrier
 it didn't work - she was informing on
 Date for HSU before she became a witness

PS - log just a summary
 Need to find context - KR's, notes etc

MF - Can advice go to KB?

Am - yes if you want

GAE - suggest looking at relevant docs

Am - need to ensure log is right.

GAE - need to know what ~~is~~ nature of disclosure
 will be. (Extent)

PS - need to speak to Pope & Ashton about sourcing
 docs

BB - 2mths?

PS - it will take a ~~bit~~ - spider-web
 while

Am - just need docs directly relevant to tasking
 on that day.

Document ID : VGSO.5000.0051.0075

G. J. Maguire *Memorandum of*
Barrister *Attendance*

To: Mr. Greg Elms
Solicitor,
Victoria Police Legal Advisers
Victorian Government Solicitors Office

By E-mail

Cc: Mr. Shaun LeGrand
Date: 22nd November 2011

Subject: DRIVER TASKFORCE - BUICK v DALE

Dear Greg,

I refer to my brief in this matter and note that Mr Dale has now been committed for trial on a number of the charges laid by the Commonwealth Director of Public Prosecutions. Given that the matter has now been completed I note my fees as follows -

1. Tuesday, 13 September 2011 - Conference with Insp. M. Frewin in respect of subpoena response and disclosure of documents to the defendant – 1 hour;
2. Thursday, 15 September 2011 - Conference with Supt. Lardner, Acting Insp Andy Bona and Louise Jarrett re subpoena response and proposed document disclosure – 1 hour;
3. Wednesday, 21 September 2011 – Conference in respect of subpoena response and disclosure of documents to the defendant – 1.5 hours;
4. Thursday, 22 September 2011 – Conference with [REDACTED] and Insp. Glow re proposed subpoena response and document review. Conference with Greg Elms, Louise Jarrett and Shaun Legrand re document disclosure – 4 hours;

5. Friday, 23 September 2011 – Conference with Insp. John O'Connor and Supt. Paul Sheridan re proposed subpoena response and document review. Also in attendance Insp. Stephen Waddell – 6 hours;
6. Sunday, 25 and Monday 26 September 2011 – Reading and preparation. Consideration of documents provided in relation to the matter. Drawing and settling memorandum of advice – 10 hours;
7. Wednesday, 28 September 2011 - Conference re memo of advice and disclosure issues with Boris Buick, Mick Frewen, Sean LeGrand, Louise Jarrett, Greg Elems and Paul Sheridan – 2 hours;
8. Monday, 3 and Tuesday, 4 October 2011 – Drawing and settling memorandum of advice. Conference re memo of advice and disclosure issues with Boris Buick, Mick Frewen, Sean LeGrand, Louise Jarrett, Greg Elems and Paul Sheridan – 3.5 hours.

I note a total of 29 hours work in relation to this matter at \$250.00 per hour and being a total of \$7,250.00. I note that other work was undertaken in relation to the matter but has not been charged for as it occurred on days on which I was otherwise engaged for Victoria Police. The fees have otherwise been calculated in accordance with my brief and are inclusive of GST.

A copy of this memo will accompany my Clerk's fee slip.

Please contact me if there are any issues which arise.

Yours faithfully,

Gerard J. Maguire.

Document ID : VGSO.5000.0033.0154

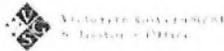
VGSO.5000.0033.0154



Re: Shaun LeGrand to **Hotham-O**

06/03/2012 02:01 PM

Hotham-O
Thank you seems an effective approach to me.
See you tomorrow.



Shaun Le Grand
Assistant Victorian Government Solicitor
Police Branch

Victorian Government Solicitor's Office
Level 8, Tower 1, 637 Flinders Street, Docklands Vic 3008
t 9247 6797 f 9247 6788 m [REDACTED]
shaun.legrand@vgso.vic.gov.au

www.vgso.vic.gov.au

Hotham-O

Hi Shaun, As I see it these are the following i...

06/03/2012 01:36:44 PM

Hotham-O
From: /MELCENTRAL/VICPOLICE@POL
To: Shaun LeGrand/Users/VGSO@VGSO,
Date: 06/03/2012 01:36 PM
Subject:

Hi Shaun,

As I see it these are the following issues to resolve:

- To identify any documents that relate to disclosures by F to Vicpol members (ICSD only) about [REDACTED] - These may fall into documents described in paragraphs 1, 2 & 21.
- Crime will have to co-ordinate a response to this issue separately to ICSD (me)
- I am almost certain (reading b/w the lines) that members such as Stuart Bateson, Boris etc must have had some communication directly with F where [REDACTED] was mentioned? I think Boris might have to think a little more laterally about notes/recordings in existence? I'll leave that to them
- I will prepare a secure, redacted document for viewing by Gerard, from today it's clear he's seen a comprehensive log related to the Dale matters
- Discussions with Crime must be held without any reference to human sources or F dealing with members of ICSD - This knowledge won't assist them or impact upon their response to the subpoena
- I will have Crime co-ordinate a response to their side via Neil Paterson (Acting

VGSO.5000.0033.0154

VGSO.5000.0033.0155

A/C at ICSD). As stated, there is no point or necessity in Crime Dept members being aware of our involvement

I am investigating whether we have already been down this path with another subpoena linked to Petra, something rings a chord with me. I am aware of a list of entities that has been put together that may be affected by Vicpol dealings with F. I may be able to determine how many 'live' matters could be impacted by a disclosure. It may not be as extensive as first thought. Irrespective, any disclosure will hurt us significantly. See you tomorrow

Hotham-O

Hotham-O

Human Source Management Unit | Victoria Police

phone: [REDACTED]

address: 18/412 St Kilda Road, Melbourne Vic Australia 3004 | DX210094

email: [REDACTED] web address: www.police.vic.gov.au

VGSO.5000.0033.0154

Document ID : VGSO.2000.1501.0143



Victorian Government
Solicitor's Office

Memorandum

To:	Findlay McRae Director, Legal Services Victoria Police	Date: 14 April 2014
From:	Shaun Le Grand Assistant Victorian Government Solicitor Police Branch Victorian Government Solicitor's Office	Your ref:
		Our ref: 1404672
Subject:	Witness protection concerns: mandatory report to DHS	

1. We are asked to advise whether a member of Victoria Police has a mandatory obligation to report their concerns about the welfare of a child of a witness (**Witness**) to the Secretary of DHS (**DHS**) under the *Children, Youth and Families Act 2005* (**CYF Act**).

Legislation

2. We set out below relevant provisions of the CYF Act with key aspects emphasised.

182 Who is a mandatory reporter?

- (1) The following persons are mandatory reporters for the purposes of this Act—

...

- (e) *a member of the police force;*

184 Mandatory reporting

- (1) A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, ***forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(1)(c) or 162(1)(d) must report to the Secretary that belief and the reasonable grounds for it as soon as practicable—***

- (a) *after forming the belief;* and
- (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

Penalty: 10 penalty units.

Victorian Government Solicitor's Office
Level 8, Tower 1, 637 Flinders Street, Docklands, 3008
Tel: 9247 3053 Fax: 9247 6788

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- 2 -

- (2) It is a defence to a charge under subsection (1) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person.

...

- (4) For the purposes of this section, a **belief is a belief on reasonable grounds if a reasonable person** practising the profession or **carrying out the duties of the office**, position or employment, as the case requires, **would have formed the belief on those grounds.**

186 Grounds for belief

Grounds for a belief referred to in this Division are—

- (a) matters of which a person has become aware; and
 (b) any opinions based on those matters.

162 When is a child in need of protection?

- (1) For the purposes of this Act a **child is in need of protection if** any of the following grounds exist—

...

- (c) **the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;**
- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (2) For the purposes of subsections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances.
- (3) For the purposes of subsection (1)(c), (d), (e) and (f)—
- (a) the Court may find that a future state of affairs is likely even if the Court is not satisfied that the future state of affairs is more likely than not to happen;
- (b) the Court may find that a future state of affairs is unlikely even if the Court is not satisfied that the future state of affairs is more unlikely than not to happen.

Background

3. We are instructed or aware of the following matters. We do not refer to these matters as being the only matters relevant to the issue of mandatory reporting in the Witness's case since our knowledge of the Witness's personal circumstances is very limited.
4. The Witness is the mother and full-time carer of [REDACTED]
5. The Witness is assessed by [REDACTED] Victoria Police to be at high risk of serious injury or death from serious criminals and their connections in part related to a widely distributed newspaper report alleging that the Witness was "recruited by Victoria Police to inform on criminal figures running Melbourne's drug trade for more than a decade."¹
6. On 11 April 2014, the Chief Commissioner of Police obtained a permanent injunction by order of the Supreme Court of Victoria to restrain the publishing of any information stating or implying that the Witness is or was a police informer and any information that would identify the Witness.
7. For a number of days following the Herald Sun article the Witness and her child have been protected by 24 hour police protection at a secure location but that has been stopped at the Witness's request and the Witness has returned to her usual residence.
8. The Witness has mental health issues and has recently engaged in self-harming behaviours.
9. Despite some additional security measures at her residence the risks to the safety of Witness as assessed [REDACTED] remain high.
10. Victoria Police has offered the Witness protection as a participant in the Witness Protection Program to adequately mitigate the high risk she faces but this has been rejected by the Witness.

Advice

11. All members of Victoria Police have a mandatory reporting responsibility.
12. The obligation is said to be mandatory because s 184(1) provides that a report "must" be made in certain circumstances and makes it an offence if a mandatory reporter fails to do so. However, it is not an offence if a mandatory report is made where it need not have been. Consistent with that, s 28 of the CYF Act provides that any person may make a report to DHS if they have a significant concern for the wellbeing of a child.
13. As the emphasised parts of the legislation above indicate, members must report to DHS when, during the course of carrying out their duties, they form a belief on reasonable grounds that a child has suffered or is likely to suffer significant harm as a result of:
 - 13.1 physical injury and/or
 - 13.2 sexual abuse

¹ Herald Sun, 31 March 2014, Anthony Dowsley, page 1.

and the parents have not protected or are unlikely to protect the child from harm of that type.

14. A belief is a belief on reasonable grounds if a reasonable person carrying out the duties of a member of the police force would have formed the belief on those grounds.

Likely

15. Section 162(1)(c) (and (d)) employs the terms 'likely' when referring to the risk of significant harm to the child and 'unlikely' when referring to the risk that the parents will not protect the child from that harm. Accordingly, a member is required to make an assessment of the likelihood of harm and of the adequacy of parental protection from that harm.
16. While likelihood in some legal uses may refer to whether an event is 'more likely than not' that is not the ordinary meaning of 'likely'. Since the CYF Act has not provided a definition of 'likely' for mandatory reporters, the principles of statutory interpretation require that an undefined term is given its ordinary meaning. That outcome is consistent with the fact that a mandatory reporter is an ordinary person required to make these judgements and not a court weighing matters on the balance of probabilities. As a consequence, whether something is likely or unlikely for the purposes of a mandatory report is a consideration of whether there is 'a real chance or possibility' that a future state of affairs may or may not arise.²
17. In a connected provision, we note that s 162(3) of the CYF Act provides that the Children's Court, in dealing with the question of whether a child is in need of protection application, is entitled to find a future state of affairs in s 162(1)(c)³ as being likely even if the Court is not satisfied of it being more likely than not.
18. Therefore, neither a mandatory reporter nor a Court tasked with the responsibility of considering the likelihood of harm and of adequate parental protection from that harm in s 162(1)(c) is required to be satisfied to the standard of 'more likely than not'. Rather, likelihood is determined by an ordinary use of that expression which is a lower bar and also consistent with the guiding principle of the CYF Act that the best interests of the child must always be paramount.⁴

Singular risks

19. It will be noted from s 162(2) that the risk need not arise from any series of acts, omissions or circumstances or any course of conduct. If a member perceives a single act, omission or circumstance as productive of risk against which the child's parent has not taken or is unlikely to take appropriate protective action then that justifies a report of the matter to DHS.

Considerations in this case

20. The nature of the risk of physical harm in this case is not typical in the sense it is not a risk of family violence occurring to the child. Rather, the risk is that the Witness may be attacked by a dangerous criminal intent on injuring or killing her. While it

² See discussion of meaning of 'likely' in *Seven Network Limited v News Limited* [2007] FCA 1062 at [2231].

³ (or in respect of other paragraphs of that sub-section)

⁴ It should be noted however, that the best interests principles are not applicable to mandatory reporters. Pursuant to s 8 of the CYF Act the best interests principles are only applicable to certain decisions of a Court, the Secretary or a community service.

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may not be discounted that the Witness's infant child would also be an intended target of violence the mere fact of ^{PII} child being so proximate to a person subject to that risk is of serious concern.

Is the child is likely to suffer significant harm as a result of physical injury?

21. In respect of this limb, a mandatory reporter must believe that the risk of physical harm to the child is likely in the sense of it being a real chance or possibility.
22. It would seem the risk assessment ^{PII} that the Witness is at high risk of being seriously injured or killed already indicates that Victoria Police has ample ground on which to be satisfied that physical harm to the child is likely. The fact Victoria Police went to the unusual length of providing 24 hour protection at a secure location for the Witness and her child as a short-term security measure demonstrates that concern. This concern is also demonstrated by the offer to the Witness and her child to become a participant in the Witness Protection Program.

Have the child's parents protected the child or are they unlikely to protect the child from harm of that type?

23. In respect of this limb, a mandatory reporter must believe either the parents have not protected the child or they are unlikely to protect the child from the risk of physical harm. The extent the parents may be unlikely to protect the child involves a belief as to whether there is a real chance or possibility that they could not protect the child.
24. Of overwhelming significance in this matter is the refusal by the Witness to accept ongoing short-term close protection and also refuse long-term protection for her and her child as a participant of the Witness Protection Program.
25. We understand that the Witness's present security response has involved upgrading some home security measures but otherwise she proposes to live in her usual residence and generally live her life in her usual way.
26. We take it as understood that Victoria Police do not accept the Witness's approach as an adequate response by her to address the risk assessment ^{PII}.
27. In these circumstances it would also seem that Victoria Police has sufficient basis to believe that the Witness has neither protected the child from the risk being faced and is unlikely to be able to protect herself or her child from an attack of the kind to which she is believed to be exposed.

Shaun Le Grand, Assistant Victorian Government Solicitor 

Document ID : VGSO.2000.1501.0162

VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE

FILE Lawyer X Date 15/04/2014

TT TF
AK AO

Fin McAra's office

Author SLG
Time 11:40

Frage to determine where ^{as} matter
requiring report to:

- Discip. - PSG
- DRP.
- IBAC

Doc: Themes: Courts (Loricated)

Document ID : VGSO.2000.1500.0002

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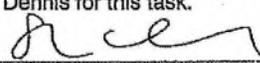
Victorian Government
Solicitor's Office

*12-5-14
Review
Dennis,
- Mackie
Anet*

Memorandum

To:	Findlay McRae Director, Legal Services Victoria Police	Date: 23 April 2014
From:	Shaun Le Grand Assistant Victorian Government Solicitor Police Branch Victorian Government Solicitor's Office	Your ref: Loricated
		Our ref: 1404672
Subject:	Human source: Review of handling logs	

- On 15 April 2014, you provided 353 pages of extracts from the undated coded logs of various source handlers of Victoria Police recording matters of interest to them arising from apparently hundreds of discussions they had with a human source and lawyer over what seems to have been several years from around the mid 2000's.¹
- We were instructed to review this material with a view to advising how Victoria Police may determine whether there may have been information obtained from the source that could have prejudiced a fair trial.
- Having perused a number of the log entries it is apparent they are generally summaries of the source's own conversations with and opinions about the past and contemporaneous criminal activities and criminal proceedings of a large number of persons.
- We consider that only a person with a thorough understanding of the persons and information the subject of the log entries and of the criminal proceedings to which those persons were subject could possibly make an adequate assessment of whether the information disclosed to police by the source deserves any specific attention or justifies any specific treatment. For these reasons it is neither possible nor functionally appropriate the VGSO to attempt to perform that task.
- In the circumstances, an option we suggest is to engage counsel to provide a vetting framework for police members with adequate knowledge of the source's material to identify whether there is information disclosed by the source that had the potential to interfere with justice in a particular case. In particular, whether client legal privilege or confidentiality may have been breached and whether this may have led to evidence being unlawfully, improperly or unfairly obtained and not disclosed before trial or whether an accused's defence or right to silence was improperly impugned in other ways by the source's provision of information to police.
- We would be pleased to receive your instructions to brief counsel as proposed. Subject to your views we would recommend Brian Dennis for this task.

Shaun Le Grand, Assistant Victorian Government Solicitor 

¹ With your approval, for security purposes all of the material received was destroyed on 17 April 2014.

Document ID : VGSO.2000.1501.0178

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE

Laricated

Date 12 / 05 / 2014

TT	TF
AI	AO

Fin, Manigie Susan, S. S. Keenan.

Author SCS

Time 2:30 -

- law clerk - Robina - UK -

↳ now work.

o did it prejudice a prosecution?

o was it used?

↳ what is a rule.

Why for an inference can be drawn & replace it.

59.0 - 4 hrs to read the Morgan file - 144p of notes

o info re own clients.?

o How was it used? Link

o Did have impact on a prosecution

Counsel: assessment of impact.

trage to provide advice to DPP -

- IBAC - Misconduct



- contemporary authorities in the 1990s

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE _____ Date _____ / _____ / 201
 Author _____
 Time _____

TT	TF
AI	AO

1. Info to police - about own chest

2. Given to an ~~inquest~~ or investigation.

3. Did inf. have impact on a possible?

Newspaper articles

o Extent of log vobation.

- o Case law research

- R v Robson

- HM.

CDPP - How many?

- bulky? - not always bulky

- 165 disks?

o chronology.

SDU = disorganized. Not implicit.

o left a own.

Document ID : VGSO.2000.1501.0195

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE
RECORD OF ATTENDANCE / FILE NOTE**

FILE

Op Bendigo
+ Lawyer X.

Date

16, 4, 2015

TT	TF
AI	AO

Author

SCS

Time

2:30pm

TO DO BY WED 22/04/15.

- ① Review Kellam / IBAC Report
Recommendations
- ② Review ^{proposed} amendments to VPM to
determine if adequate to address
IBAC recommendations. &
~~or~~ ~~review~~
Whether any policy from UK
Codes of Conduct could be
incorporated. - maybe list of
relationships
- ③ Consider McViolet advice in
IBAC report - what are the
'take out' messages for Viclet.
is confidential info is more
than LPP
- list of relationships
- ④ 2 x DC's - matter for CCP to discuss with
DPP.

Document ID : VGSO.2000.1501.0211



Victorian Government
Solicitor's Office

Memorandum

To:	Findlay McRae Director, Legal Services Victoria Police	Date: 22 April 2015
From:	Amy Galeotti Solicitor Police Branch Victorian Government Solicitor's Office	Your ref: Operation Bendigo
		Our ref: 1404672
Subject:	Review of draft Victoria Police policy in response to IBAC Report	

1. We refer to your urgent request to review and comment on the proposed amendments to the Victoria Police Manual Policy Rules - Human Sources (VPM), specifically with reference to:
 - 1.1 whether the proposed VPM addresses the Recommendations of the IBAC Report concerning Victoria Police handling of Human Source code name 3838 (**Report**).
 - 1.2 whether any further amendments to the VPM should be made based on the UK Code of Practice on Covert Human Intelligence Sources;¹ and
 - 1.3 the key points of the advice by Dr Sue McNicol QC to IBAC (**McNicol advice**) as relevant to Victoria Police.

Comments

2. Based on our review of the proposed VPM and the Report, we identify the following main issues:

Approval of registration as a human source

3. We are concerned that the VPM does not clearly establish the process for registering a person as a human source.
4. The VPM states that the Local Source Registrar (**LSR**) is responsible for making a recommendation to the Central Source Registrar (**CSR**) as to whether an application for registration should be approved: s 1.9. The CSR is said to have "oversight of all registrations": s 1.10. However, s 3.2 states that a registration is not approved until approved by an LSR. It is unclear whether registration approval is to be granted by the LSR or CSR. Further, it appears that in urgent circumstances, HSMU may grant registration approval verbally after being provided with a verbal or written risk assessment by the handling team which has been approved, verbal or in writing, by the LSR.
5. Due to lack of clarity about when registration occurs (ie. upon upload to Interpose or final approval by the CSR), it is also unclear when the potential source is required to complete the Acknowledgement of Responsibilities (**AOR**): see s 1.16 and s 5.5. In

¹ Issued pursuant to s 71 of the *Regulation of Investigatory Powers Act 2000* (UK).

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addition, the AOR is of uncertain legal effect and it is recommended the pro-forma be submitted for legal review.

Risk assessment process

6. We also consider that timing for the risk assessment process is not immediately apparent in the VPM. Section 1.7 states that the controller must ensure that a risk assessment (RA) is completed and any potential risks mitigated, as well as ensuring the RA form is uploaded to Interpose, prior to a source registration being approved. However, s 3.2, s 4.1 and the Risk Assessment itself state that the RA must be completed and uploaded to Interpose [REDACTED] by the handler or controller. This may be intended to mean that the RA must be uploaded [REDACTED] of the handling team lodging a registration application; however as currently worded the VPM suggests that the RA does not have to be completed until after the person is registered and approved as a human source.
7. We also query whether the RA document for handlers to complete is sufficient to alert them to the risk of registering a person who may have access to legally privileged or confidential information. We suggest amending Risk Consideration 10 by broadening the question to refer to any person likely to have an obligation to keep certain information confidential (eg. medical practitioners, lawyers, journalists etc). We also suggest amending the Contingencies for Risk Consideration 10 to state that advice must be sought from the HSMU and the Legal Services Department prior to the person's registration as a human source.

Engaging human sources who may have conflicting professional duties
(see Recommendation 1(b) in the Report)

8. Sections 4.5 and 4.6 of the proposed VPM have been amended in response to Recommendation 1(b). Section 4.5 states that "where complex legal, ethical or medical considerations are evident with a human source, such as the human source being occupationally bound by other duties... advice must be sought from the HSMU." The HSMU must then seek advice from the Legal Services Department prior to the completion of the risk assessment, which must be brought to the attention of the LSR and CSR prior to registration as a human source.
9. We suggest that s 4.5 of the VPM be amended to include examples of relationships and information that is likely to give rise to an obligation of legal professional privilege or confidentiality- eg, communications between a lawyer and a current/former/potential client; a medical or health practitioner and patient; a religious official and an individual; a journalist and a source; or a Member of Parliament and constituent.² Further, information protected by confidentiality may include information obtained by an employee or information obtained in the course of trade or business.
10. We suggest that the VPM could also caution about registering sources who may have access to information subject to legal professional privilege or confidentiality (eg a partner or close family member of a person with professional confidentiality obligations). While a duty of confidentiality arises as a professional obligation between a professional person and their client, the information does not lose its confidential status if it is wrongly disclosed to another. Even the recipient of wrongly disclosed confidential information can be compelled by law to keep that information confidential.

² See, for eg, the UK Code of Practice on Covert Human Intelligence Sources p 24. We note that s 4.6 of the VPM includes the examples of persons who may have professional obligations of confidentiality ("lawyers, doctors and clergy"), but this is directed to persons who have already been registered as a source.

Obtaining, using and managing information that may be subject to legal professional privilege and/or confidentiality (see Recommendation 1(a) of the Report)

11. Section 4.6 sets out the process for when a human source discloses information which appears to be in breach of 'professional privilege'. We recommend that this be amended to 'breach of confidentiality obligations or legal professional privilege' (noting that legal professional privilege is a specific kind of confidential information). The process is for HSMU to be notified, who in turn will advise the CSR and the Human Source Management Ethics Committee. We recommend that HSMU be required to seek legal advice from the Legal Services Department regarding the management and use of the information.

Human sources as witnesses and responding to coercive hearings (see Recommendations 1(e) and 10 (e) of the Report)

12. We understand that Chapter 2.2 of the VPM requires further amendment, as Recommendations 1(e) and 10(e) are not currently addressed.

McNicol advice

13. We have summarised the McNicol advice as follows:
- 13.1 Legal professional privilege applies to confidential communications made in a lawyer-client relationship for the dominant purpose of giving or obtaining legal advice or legal services. Lawyers are under a strict duty not to disclose privileged communications, even if it would assist in the investigation or prosecution of criminal activity. There are very limited exceptions; most relevantly, communications in furtherance of a crime or fraud (ie, communications which are criminal in themselves, or intended to further a criminal purpose).
- 13.2 Most communications made between lawyers and clients will generally be considered confidential, even if they are not privileged. Lawyers are obliged not to disclose confidential communications made by a client, although there are some exceptions. The most relevant is the iniquity exception, which applies if:
- (a) disclosure of the confidential information would reveal the existence of an iniquity of public importance (ie, a crime, civil wrong or serious misdeed of public importance); and
- (b) the person seeking to protect the confidence is doing so to prevent disclosure to a third party with an interest in redressing the alleged crime, wrong or misdeed.
- 13.3 Persons other than lawyers can also be bound by an obligation of confidentiality, eg, because of a professional or contractual relationship. Whether or not a person is under an obligation not to disclose information depends on the circumstances in which the information was obtained.
14. Aside from the common law exceptions to privilege and confidentiality discussed in the McNicol advice, we note that the following exceptions are contained in Rule 3 of the *Professional Conduct and Practice Rules 2005*, which applies to all solicitors in Victoria:

- 4 -

the *Professional Conduct and Practice Rules 2005*, which applies to all solicitors in Victoria:

3. Confidentiality

- 3.1 A practitioner must never disclose to any person, who is not a partner proprietor director or employee of the practitioner's firm, any information which is confidential to a client and acquired by the practitioner's firm during the client's engagement, unless -
- 3.1.1 the client authorises disclosure;
 - 3.1.2 the practitioner is compelled by law to disclose;
 - 3.1.3 the practitioner discloses information in circumstances in which the law would probably compel its disclosure, despite a client's claim of legal professional privilege, and for the sole purpose of avoiding the probable commission or concealment of a serious criminal offence;
 - 3.1.4 the information has lost its confidentiality; or
 - 3.1.5 the practitioner obtains the information from another person who is not bound by the confidentiality owed by the practitioner to the client and who does not give the information confidentially to the practitioner.

We note that similar rules apply to barristers in Victoria under the Victorian Bar Practice Rules.

15. We consider that the key points for Victoria Police to consider including in the VPM or other applicable HSMU policy are:
- 15.1 Lawyers are likely to be under a duty of legal professional privilege or confidentiality in respect of any information obtained from a client.
 - 15.2 Other persons may also be subject to a duty of confidentiality depending on how they obtained the information.

Amy Galeotti

Approved by: Shaun Le Grand, Assistant Victorian Government Solicitor

