

1 HIS HONOUR: The subpoena?

2 MS BOLKAS: Yes.

3 HIS HONOUR: His answer (indistinct)

4 MS BOLKAS: What has been provided is all the documentation
5 that is relevant to the question of [REDACTED] In
6 particular, if Your Honour goes to p.4 of the longer
7 letter, paragraph (iii), under Item 6 - (viii),
8 Your Honour, sorry.

9 HIS HONOUR: Yes, (viii) (indistinct) directions.

10 MS BOLKAS: Yes.

11 HIS HONOUR: (indistinct)

12 MS BOLKAS: Yes. The response is set out there, Your Honour.
13 I claim that privilege now.

14 HIS HONOUR: This letter, volume 1, Item 6(iii), is it under
15 that area?

16 MR GRANT: It's under tab 6, Your Honour, of that volume.

17 HIS HONOUR: Tab 6. How far is it in?

18 MR GRANT: It's about a third of the way into it, Your Honour.

19 HIS HONOUR: The one of 7 January, Jeremy Rapke QC, or after
20 that?

21 MS BOLKAS: No, the 5th - yes - - -

22 MR GRANT: Before that.

23 HIS HONOUR: Before that?

24 MR GRANT: Excuse me one moment, Your Honour.

25 MS BOLKAS: It's immediately after a letter of 4 February 2010.

26 HIS HONOUR: (indistinct)

27 MS BOLKAS: So it's the third document in.

28 HIS HONOUR: I've got the letter of 7 January.

29 MS BOLKAS: I'll just hand it to you.

30 HIS HONOUR: Is it after that or before it?

31 MS BOLKAS: It's before it.

1 HIS HONOUR: Before it?

2 MS BOLKAS: Yes. We'll hand it to you, Your Honour, if
3 it's - - -

4 HIS HONOUR: No, I see it. The 7 January one to the director
5 is certainly not before that, not in my copy anyway.

6 MS BOLKAS: The problem with our copy is that we gave that
7 7 January letter to the witness.

8 MR GRANT: Sorry, Your Honour, it is after that. It's about
9 15 pages after that.

10 HIS HONOUR: What's the question, Mr Lopez?

11 MR LOPEZ: I just referred him to the letter and there was an
12 objection.

13 MS BOLKAS: No, the question, Your Honour, was, "Did you get a
14 reply? Did you send a reply?" It was just continuing
15 to - - -

16 HIS HONOUR: Did he receive a reply and did he reply verbally
17 (indistinct) verbal one, but (indistinct)?---Yes, I did
18 get a reply.

19 MR LOPEZ: What happened to the reply?---It was verbal.
20 It was verbal?

21 HIS HONOUR: So you didn't get a written reply?---Sorry,
22 Your Honour, no. I misunderstood.

23 MR LOPEZ: Did you make a note about what you were told?

24 HIS HONOUR: (indistinct)

25 MR LOPEZ: Your Honour, this is in writing. This is a
26 document. He receives the instruction from the chief
27 commissioner and it is inconceivable, Your Honour, that
28 the chief commissioner gives a direction to one of his
29 officers (1) that is not in writing; (2) it's verbal, and
30 the officer receiving the direction, the order, does not
31 make a note of it, Your Honour. That's what I'm

1 querying. That's what I'm challenging. There's got to
2 be a document in relation to this.

3 HIS HONOUR: He got a verbal reply.

4 MR LOPEZ: He's got a verbal reply, and what does he do about
5 it? Forget about it? No, he's got to write it
6 somewhere, Your Honour. There's got to be a note. "What
7 does the chief commissioner want me to do?" It's got to
8 be in writing. That's what I'm asking, Your Honour, and
9 I'm entitled to ask about it.

10 MS BOLKAS: And I've claimed privilege in relation to this area
11 of questioning, Your Honour, as set out in this letter.

12 HIS HONOUR: Under what heading?

13 MS BOLKAS: Under Police Methodology, [REDACTED]
14 [REDACTED]

15 Your Honour.

16 MR LOPEZ: I'm not talking about those things. I'm asking him,
17 "Did you receive an instruction from the chief
18 commissioner and did you make a note of it?" That's what
19 I'm asking at this stage.

20 HIS HONOUR: Yes. Well, public interest immunity has been
21 claimed. Whether it is granted - - -

22 MR LOPEZ: What, the fact that he makes a note of what he says,
23 Your Honour?

24 HIS HONOUR: I can't take issue with it. If it's claimed, it's
25 claimed. I have to decide - - -

26 MR LOPEZ: Your Honour will have to decide it down the track
27 then, yes.

28 HIS HONOUR: Yes.

29 MR LOPEZ: There would have to be supporting material in
30 relation to this. Just to make sure that I understand
31 it, public interest immunity is being claimed to

1 ascertain - so that he can't answer whether he made a
2 note of the chief commissioner's instruction? That's
3 what's seriously being claimed as public interest
4 immunity, is it, Your Honour? I just want my friend to
5 confirm that.

6 MS BOLKAS: What's being claimed is any further questions
7 addressed to this witness in relation to Item 6(viii)
8 which seems to be what the question that my learned
9 friend is asking is directed to. If I'm wrong, then my
10 learned friend in my submission ought to indicate what
11 his question is related to.

12 HIS HONOUR: His question is whether this witness recorded a
13 note. I wouldn't have thought that would be under public
14 interest immunity. Maybe the contents of the note are,
15 but the fact that he took a note I don't think would be.

16 MS BOLKAS: If Your Honour pleases. I won't pursue the claim
17 in relation to the answer about whether he made a note.

18 HIS HONOUR: Did you make a note that verbal communication was
19 received from then Deputy Commissioner Overland?---My
20 recollection, I did not make a note.

21 MR LOPEZ: Do you normally make notes of directions you get
22 from the chief commissioner?---Not as a matter of course.

23 I said do you normally get it?---Do I normally get it?

24 Do you normally make notes of directions you receive from the
25 chief commissioner?---No.

26 So the making of a note of a direction from the chief
27 commissioner would be the exception rather than the rule.
28 Is that what you say?---Yes.

29 Why?

30 MS BOLKAS: Well, I object to that, Your Honour.

31 MR LOPEZ: It's all right. (To witness) You say this in the