

From: [Moller, Scott](#)
To: [Rose, Robert](#); [Madders, Trent](#); [Frizzell, Emma](#)
Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]
Date: Thursday, 30 September 2021 10:14:29 AM
Attachments: [image003.png](#)
[image004.png](#)
[Time line re Op Covina SECOFFICIALSensitive.msg](#)
Importance: High

OFFICIAL:Sensitive

Colleagues,

Please upload this email to the case.

Regards Scott

DETECTIVE SUPERINTENDENT SCOTT MOLLER

CRIMINAL INVESTIGATIONS

ACT POLICING

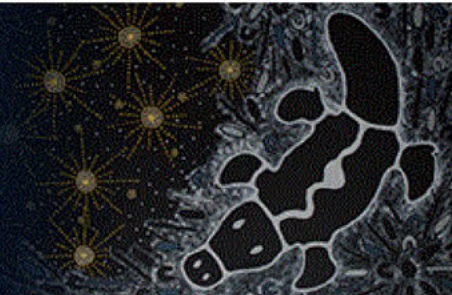
Tel: Personal information

www.afp.gov.au



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From: O'Meagher, Hall <Personal information@afp.gov.au>
Sent: Thursday, 30 September 2021 8:00 AM
To: Moller, Scott Personal information@afp.gov.au>
Cc: O'Meagher, Hall Personal information@afp.gov.au>
Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]
Importance: High
Det./Supt. ACTP CI.

Scott.

As discussed, on Monday 27 September 2021 I had a telephone conversation with Commander Michael Chew in relation to the matter. He essentially confirmed your account of events in relation to the decision to serve the brief directly on the Defendant's solicitor at the time that the summons was served, stating:

- The brief of evidence had been assessed by the ACT DPP.
- The investigation had been independently reviewed.
- There was a desire to expedite the matter.
- There was a requirement to implement efficiency in the COVID19 environment.
- The errors in redacting documents and the inclusion of other documents were an honest mistake by the members involved.

On 29 September 2021 I had a conversation with the Deputy Chief Police Officer, Acting Assistant Commissioner Linda Personal information. She instructed that you should respond to the ACT Director of Public Prosecutions; identifying who made the decision to hand the brief directly to the Defence,

and the reasons for that decision.

Regards,

ACTING COMMANDER HALL O'MEAGHER

INVESTIGATIONS COMMAND

ACT POLICING

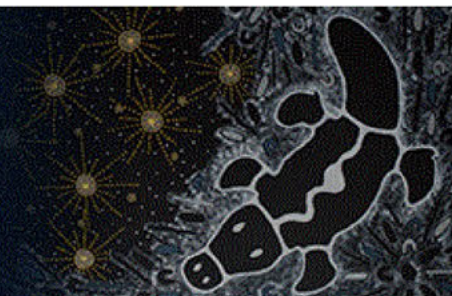
Tel: [Personal Information]

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From: O'Meagher, Hall

Sent: Monday, 27 September 2021 9:40 AM

To: Champion, Linda [Personal Information] <[redacted]@afp.gov.au>

Cc: O'Meagher, Hall <[redacted]@afp.gov.au>

Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

Importance: High

DCPO.

Acting Assistant Commissioner [redacted]

As discussed last week, it is apparent that the Operation Covina detectives facilitated the service of the brief of evidence directly on the defendant's solicitor, rather than through the ACT DPP (which is current practice); and that sensitive information redacted electronically from the documents in the brief have not been "locked" and can potentially be manipulated to be viewed. Further, there may have been material included in the brief of evidence that should not have been disclosed to defence at this stage of proceedings.

In response, remedial actions have been taken, including communication with the defence solicitor and the destruction of the brief of evidence served on defence. *It should be noted that the defence have indicated that they have only accessed the fact sheet within the brief.*

I refer you to the correspondence below from the ACT Director of Public Prosecutions, Mr Shane Drumgold. He is requesting advice in relation to:

- Who made the decision to hand the brief directly to defence; and
- The reasons for the decision to hand the brief directly on defence?

The Director has requested statements confirming the answer to these questions.

It is evident that the decision was made within ACTP Senior Executive (refer attached).

As you are aware, neither you or I were in the direct chain of command at the time of these decisions. However, I request your advice in progressing the matter; suggesting that communication with the Director regarding this aspect of the matter be made at a senior level within ACTP.

Regards,

ACTING COMMANDER HALL O'MEAGHER

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From: Moller, Scott <Personal information [@afp.gov.au](mailto:scott.moller@afp.gov.au)>
Sent: Monday, 27 September 2021 8:40 AM
To: O'Meagher, Hall <Personal information [@afp.gov.au](mailto:hall.omeagher@afp.gov.au)>
Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hall,

As per below email from Shane Drumgold, he is still awaiting a response in relation to:

- 1) Who made the decision to hand the brief directly to defence?
- 2) The reasons for the decision to hand the brief directly on defence?

Appreciate your advice on how to respond.

Regards Scott.

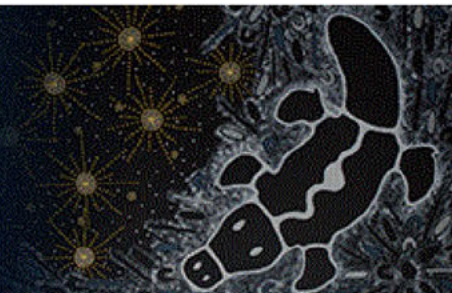
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From: Drumgold, Shane <Personal information [@act.gov.au](mailto:shane.drumgold@act.gov.au)>
Sent: Friday, 24 September 2021 11:29 AM
To: Moller, Scott <Personal information [@afp.gov.au](mailto:scott.moller@afp.gov.au)>
Cc: Frizzell, Emma <Personal information [@afp.gov.au](mailto:emma.frizzell@afp.gov.au)>; Madders, Trent <Personal information [@afp.gov.au](mailto:trent.madders@afp.gov.au)>;
 Rose, Robert <Personal information [@afp.gov.au](mailto:robert.rose@afp.gov.au)>; Personal information Damien <Personal information [@afp.gov.au](mailto:damien@afp.gov.au)>;
 Jerome, Skye <Personal information [@act.gov.au](mailto:skye.jerome@act.gov.au)>
Subject: RE: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

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Thank you for this advice, however as stated this will also become relevant to a fact in issue, as well as credibility issues in the trial, so I asked to be advised:

- 1) Who from the AFP provided the brief to defence?
- 2) Who it was provided to?
- 3) How it was provided (posted or handed to defence)?
- 4) If handed to defence, the circumstances under which it was handed to them (ie if it was a meeting, what the meeting was for)?
- 5) Who made the decision to hand the brief directly to defence?
- 6) The reasons for the decision to hand the brief directly on defence?

I understand from your email that the answer to the question 2 is Barrister John Korn and question 3 is personally handed to him.

Can I please get an answer to the remaining questions?

Further, confirming that I will require statements supporting the above.

**Shane Drumgold SC**

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

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T:

M:

M:

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E: Personal information @act.gov.au (EO)

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Artwork by Ngarrindjeri artist Jordan Lovegrove

From: Moller, Scott <Personal information @afp.gov.au>

Sent: Friday, 24 September 2021 10:41 AM

To: Drumgold, Shane <Personal information @act.gov.au>

Cc: Frizzell, Emma <Personal information @afp.gov.au>; Madders, Trent <Personal information @afp.gov.au>;

Rose, Robert <Personal information @afp.gov.au>; [Redacted] Damien <Personal information @afp.gov.au>;

Jerome, Skye <Personal information @act.gov.au>

Subject: RE: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

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Good morning Shane,

In response to your email dated Wednesday 22 September 2021, I contacted Mr Korn by email (which I CC'd you into) notifying him of the issues that had been identified in the copy of the brief provided to him on 6 August 2021.

I requested that he delete the documents that were identified as not being correctly redacted, as

well as the audio copy of the EICI and the complainant's counselling notes. I advised Mr Korn that updated, correctly redacted documents would be provided as soon as possible. I then had a follow up telephone conversation with Mr Korn, **who confirmed to me that he had not accessed the brief, other than to read the fact sheet.** Mr Korn agreed to destroy the brief and provide written confirmation of doing so. I advised Mr Korn that your office will be providing him with a new copy of the brief in due course.

My team has since corrected the documents within the brief ensuring the redactions are accurate and locked. A new defence copy of the brief has been prepared and I will arrange for this to be provided to your office.

With respect to communication with the complainant, advice was received from Heidi Yates and confirmed by yourself on 26 August 2021, that your office would take on responsibility for providing Ms Higgins with all information, updates and advice. As such, and in line with this agreement it is more appropriate that the DPP provide the requested update noting that Mr Korn has not accessed any of the documents.

To briefly answer your questions below regarding service of the brief on Mr Korn. I can confirm that the brief was served on Mr Korn in person shortly after the service of the summons for Mr Lehrmann. Mr Korn requested a copy of the brief at that time and arrangements were made for a copy to be provided. This occurred at his office in Sydney.

Regards

Scott

DETECTIVE SUPERINTENDENT SCOTT MOLLER

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From: Drumgold, Shane Personal information [@act.gov.au](mailto:shane.drumgold@act.gov.au)>

Sent: Wednesday, 22 September 2021 8:17 AM

To: Moller, Scott Personal information [@afp.gov.au](mailto:scott.moller@afp.gov.au)>

Cc: Frizzell, Emma Personal information [@afp.gov.au](mailto:emma.frizzell@afp.gov.au)>; Madders, Trent Personal information [@afp.gov.au](mailto:trent.madders@afp.gov.au)>;

Rose, Robert Personal information [@afp.gov.au](mailto:robert.rose@afp.gov.au)>; Toohey, Damien Personal information [@afp.gov.au](mailto:damien.toohey@afp.gov.au)>;

Jerome, Skye Personal information [@act.gov.au](mailto:skye.jerome@act.gov.au)>; Priestly, Erin Personal information [@act.gov.au](mailto:erin.priestly@act.gov.au)>

Subject: RE: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

This is deeply concerning. Can you please advise, as a matter of urgency, what is being done to correct the situation?

May I suggest the following as a start:

- 1) AFP contact whoever the brief was handed to, and direct them to delete the offending

documents.

- 2) AFP provide my office with a copy of documents that can be served on defence, complete with locked redactions for us to serve as replacements.
- 3) Write to the complainant through her representatives, and inform her
 - a. Her counselling notes were served on defence
 - b. Other documents were served with unlocked redactions enabling contact information to be revealed
 - c. The recordings of her EIC interviews were served on defence
 - d. What remedial action was taken
- 4) Copy myself into the actions.

This will also become relevant to a fact in issue, as well as credibility issues in the trial, so can I please also be advised:

- 1) Who from the AFP provided the brief to defence?
- 2) Who it was provided to?
- 3) How it was provided (posted or handed to defence)?
- 4) If handed to defence, the circumstances under which it was handed to them (ie if it was a meeting, what the meeting was for)?
- 5) Who made the decision to hand the brief directly to defence?
- 6) The reasons for the decision to hand the brief directly on defence?

I will also require statements from the relevant parties outlining all of the above activity, including the remedial activity.



Shane Drumgold SC

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: Personal information

T: Personal information

M: Personal information

E: Personal information [@act.gov.au](mailto:personalinformation@act.gov.au)

E: katie.personalinformation@act.gov.au (EO)

W: www.dpp.act.gov.au

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From: Moller, Scott <Personal information [@afp.gov.au](mailto:personalinformation@afp.gov.au)>
Sent: Wednesday, 22 September 2021 6:41 AM
To: Drumgold, Shane <Personal information [@act.gov.au](mailto:personalinformation@act.gov.au)>
Cc: Frizzell, Emma <Personal information [@afp.gov.au](mailto:personalinformation@afp.gov.au)>; Madders, Trent <Personal information [@afp.gov.au](mailto:personalinformation@afp.gov.au)>;
 Rose, Robert <Personal information [@afp.gov.au](mailto:personalinformation@afp.gov.au)>; Toohey, Damien <Personal information [@afp.gov.au](mailto:personalinformation@afp.gov.au)>
Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

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Shane,

Please see response below as requested.

Regards Scott.

DETECTIVE SUPERINTENDENT SCOTT MOLLER

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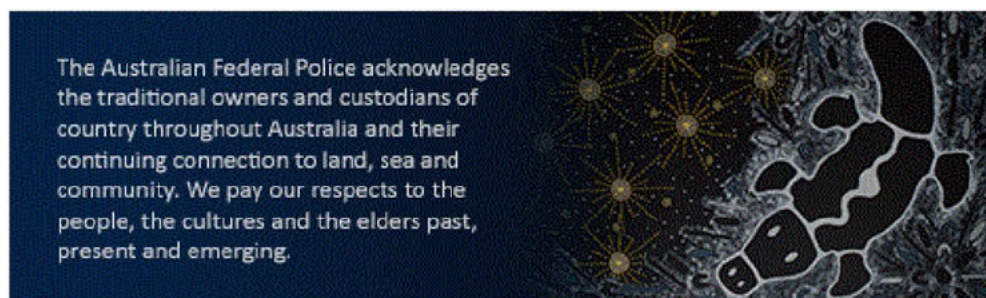
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From: Rose, Robert <Personal information @afp.gov.au>

Sent: Tuesday, 21 September 2021 3:43 PM

To: Moller, Scott <Personal information @afp.gov.au>

Subject: RE: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Dear Sir,

As requested by Mr Drumgold, I can provide the following response:

Can you please confirm that the above mentioned unlocked redactions were not in the defence copy, and they could not be removed revealing the redacted material from those documents?

I can confirm the unlocked redactions in the material referenced below **are** in the defence copy, and that the redactions **could and in fact can** be removed revealing the redacted material from documents listed below.

- i. Her Time Counselling Records;
- ii. Canberra Rape Crisis Centre Records;
- iii. Ochre Medical Records (page 8 only);
- iv. Medicare Report;
- v. PBS Report;
- vi. Consent to acquire data;

Can you please confirm the address or telephone number of any person was not disclosed?

I can confirm the address and/or phone number of the following people **is capable of being disclosed**, should someone with access to the document "click" on the redacted element as referred to above and "drag" the redaction away from the underlying material.

[Redacted]
Ms Brittany Higgins;

[Redacted]
Personal information

Can you please confirm that counselling records were not disclosed on defence without such

leave?

I can confirm the counselling records as referred to below **were** included in the defence copy of the brief, apparently without leave under s.79E being sought.

Can you please confirm that the audio recordings of the evidence in chief interviews were not disclosed to defence?

I can confirm the **audio** recordings of the evidence-in-chief interviews with Ms Higgins **were** disclosed to the defence.

Kind Regards,

Bob

DETECTIVE SERGEANT ROBERT ROSE
TEAM LEADER JACET & CSORT - CRIMINAL INVESTIGATIONS

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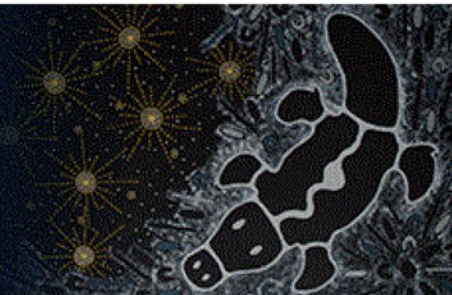
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From: Moller, Scott Personal information [@afp.gov.au](mailto:scott.moller@afp.gov.au)>

Sent: Tuesday, 21 September 2021 1:34 PM

To: Rose, Robert Personal information [@afp.gov.au](mailto:robert.rose@afp.gov.au)>

Subject: FW: Police v Lehrmann CC2021/8143 [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Bob,

A response by cob today please.

Regards Scott.

DETECTIVE SUPERINTENDENT SCOTT MOLLER

CRIMINAL INVESTIGATIONS

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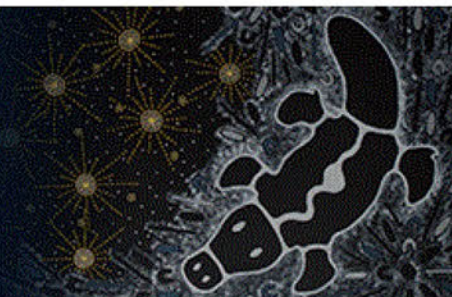
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From: Drumgold, Shane <[Personal information]@act.gov.au>
Sent: Tuesday, 21 September 2021 1:31 PM
To: Moller, Scott <[Personal information]@act.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>;
 Boorman, Marcus <[Personal information]@afp.gov.au>
Cc: Jerome, Skye <[Personal information]@act.gov.au>; Priestly, Erin <[Personal information]@act.gov.au>
Subject: RE: Police v Lehrmann CC2021/8143

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Dear All

Is it possible to get an answer to the questions in red ASAP, as depending on the answer, we may need some urgent remedial activity.



ACT DPP

Shane Drumgold SC

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: [Personal information]

T:

M:

E: [Personal information]

[Personal information]@act.gov.au

[Personal information]@act.gov.au (EO)

W: www.dpp.act.gov.au

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From: Drumgold, Shane
Sent: Friday, 17 September 2021 2:31 PM
To: Moller, Scott <[Personal information]@afp.gov.au>; [Personal information]@afp.gov.au; Boorman, Marcus
 <[Personal information]@afp.gov.au>
Cc: Jerome, Skye <[Personal information]@act.gov.au>; Priestly, Erin <[Personal information]@act.gov.au>
Subject: Police v Lehrmann CC2021/8143

OFFICIAL: Sensitive

Dear Superintendent Moller et al

We have identified an issue with the crown's copy of the brief of evidence, disclosed to my office with the file on 6 August 2021.

Unlocked redactions

Sensitive information redacted electronically from the documents below have not been locked. This means that the redactions are capable of being removed and the sensitive information revealed. We have identified the following documents which have unlocked redactions:

- i. Her Time Counselling Records;
- ii. Canberra Rape Crisis Centre Records;
- iii. Ochre Medical Records (page 8 only);
- iv. Medicare Report;
- v. PBS Report;
- vi. Consent to access iCloud;
- vii. Consent to acquire data;

Defence copy of the brief

As you are aware, section 3.3 of the AFP/DPP Collaborate Agreement outlines that *“The AFP will provide briefs of evidence to the DPP.”* Prosecution Policy section 4.4 then requires of the DPP, that ‘in fulfilling our disclosure obligations, the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.’

You have confirmed that contrary to the collaborative agreement, a copy of the brief of evidence was served on the accused’s legal representatives by the AFP on 06 August 2021.

Can you please confirm that the above mentioned unlocked redactions were not in the defence copy, and they could not be removed revealing the redacted material from those documents?

Can you please confirm the address or telephone number of any person was not disclosed?

The Counselling Records from both “Her Time” and “Canberra Rape Crisis Centre” are communications for counselling by a person against whom a sexual offence is alleged to have been committed and are accordingly “Protected Confidences” within the definition section 79A *Evidence (Miscellaneous Provisions) Act 1991* making them subject to a general immunity from disclosure under section 79D, requiring leave under s79E before being disclosed.

Can you please confirm that counselling records were not disclosed on defence without such leave?

We also understand that a copy of the complainant’s evidence in chief interviews dated 24 February 2021 and 26 May 2021 were disclosed to the defence. As you would be aware, the accused is entitled to a copy of the transcript of such recordings pursuant to s 53(2)(b) *Evidence (Miscellaneous Provisions) Act (EMPA)*, however, the accused can only access the recording by applying pursuant to ss54 and 55 EMPA.

Can you please confirm that the audio recordings of the evidence in chief interviews were not disclosed to defence?

Further evidence

Please also be advised that the following items remain outstanding on the brief of evidence:

- i. Audio visual copies of the complainant’s Evidence in Chief Interviews dated 24 February 2021 and 26 May 2021
- ii. Police statements
 - 1. Gareth Saunders
 - 2. Jason McDevitt
 - 3. Kristy [REDACTED]
- iii. Statements regarding complaint evidence



viii. Documents:

- 10. Photos of Lehrmann’s Phone – SC James [REDACTED]
- 11. Floor plan of Ministerial Suite [REDACTED] – Trent Madders
- 12. Complete download – Complainant’s 3 phones
- 13. Complete download – Accused’s phone
- 14. Transcript – [REDACTED]
- 15. Transcript – [REDACTED]
- 16. Transcript – [REDACTED]

Can you please advise when these items will be provided. Can you please ensure that any redactions from police notes are limited to unrelated investigations and sensitive information. Further, in accordance with the AFP/DPP Collaborative agreement, when available, can you please ensure both prosecution and defence copies are served on the DPP for us to serve defence.



Shane Drumgold SC

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: [REDACTED]
T: [REDACTED]
M: [REDACTED]

E: [REDACTED]@act.gov.au
E: [REDACTED]@act.gov.au (EO)

W: www.dpp.act.gov.au

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