

AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY

CRIMINAL JUSTICE SYSTEM

Mr Tony Giugni
Senior Executive Lawyer
Australian Government Solicitor
By email: tony.giugni@ags.gov.au

Dear Mr Giugni,

2023/05 – Subpoena to produce documents addressed to ACT Policing Headquarters

I refer to your letter of 10 February 2023.

Mr Sofronoff regrets that he disagrees with your analysis and your opinion concerning the scope of the *Inquiries Act 1991*. Accordingly, he considers that your client is obliged to comply with the subpoena.

In any event, your client acknowledges that “assisting with the inquiry falls within its proper functions”. If that is the effect of the relevant statutes, then your client is obliged to discharge its proper functions by complying with the substance of the subpoena, if not its legal form. You say that your client finds it “difficult, in the abstract, to identify with precision the consequences that may flow from the position that the AFP must take”. The requirement, or request, is neither abstract nor obscure and any consequences flow from the terms of relevant statutes.

In any case, I am instructed that Mr Sofronoff is not prepared to proceed with this inquiry on the footing that the nature of your client's response to a subpoena depends just upon its own decision whether to comply. If your client wishes to maintain that view, then it ought to apply immediately to the Supreme Court for a declaration that the subpoena has no effect.

Mr Sofronoff is surprised that your client has delayed until yesterday to communicate its opinion that it is immune from subpoenas under the Act and that it does not know how to proceed because of a difficulty in judging consequences. The intention of the government of the ACT to establish an inquiry was published in December and its establishment was announced at the beginning of this month. The AFP has had ample time to consider its legal obligations. You will understand that, having regard to the Commissioner's obligation to report by the end of June of this year, I cannot afford any unnecessary delays.

Mr Sofronoff is grateful for your client's willingness, having regard to its views, to treat the subpoena as request with which it chooses to comply. Accordingly, he will not treat compliance as a concession by your client about its legal rights.

I observe that your client says that it is not able to provide all requested documents by 4 pm on Monday 13 February. I invite your client to deliver on Monday such of the documents that it can deliver and to inform me of the extra time that it requires to deliver the remaining documents. Without prejudice to your client's legal position, Mr Sofronoff is willing to extend the date for compliance for a reasonable period.

In any event, if your client maintains its position that it is immune from the operation of the Act then it should immediately apply for declaratory relief and I invite you to do so not later than **Wednesday 15 February 2023**. Failing that, Mr Sofronoff will issue proceedings himself so that the legal position can be determined.

Yours sincerely,

Solicitor Assisting
Board of Inquiry – Criminal Justice System

11 February 2023