

Subpoena Number: 2023/S/0044

Sections 18(c), 26(1) and 26(3) of the *Inquiries Act 1991*

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Ms Erin Priestly

Of: ACT Office of the Director of Public Prosecutions
C/- Ms Lisa Quilty
Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra ACT 2601

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)¹ dated 1 February 2023 require you to give a written statement to the Board of Inquiry pursuant to sections 18(c), 26(1)(b) and 26(3)(b) of the *Inquiries Act 1991* in regard to your knowledge of the matters set out in the Schedule annexed hereto.

YOU MUST COMPLY WITH THIS REQUIREMENT BY:

Giving a written statement signed and witnessed in accordance with section 7 of the *Oaths and Affirmations Act 1984* (ACT) to the Board of Inquiry on or before **5:00 pm AEST on 1 June 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

A copy of the written statement must also be provided electronically by email at BOI.Notices@inquiry.act.gov.au with the subject line "Requirement for Written Statement".

If you believe that you have a reasonable excuse for not complying with this notice, you will need to satisfy me of this by the above date.

Failure to comply with this notice without lawful excuse is a Contempt of Board and you may be dealt with accordingly.

Date: 30 May 2023



Walter Sofronoff KC
Chairperson
Board of Inquiry

¹ The terms of reference of the Board of Inquiry, contained in NI2023-232 dated 28 April 2023 are set out as **Annexure A** to this subpoena.

Notes

Informal service

1. Even if this notice has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the notice and its requirements.

Where the addressee is a corporation or agency

2. If this notice is addressed to a corporation or agency, the corporation or agency must comply with the notice by its appropriate person or proper officer.

Objections

3. If you object to a document or thing produced in response to this notice being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry about your objection and the grounds of your objection either orally on the return date for this notice or in writing before or after the return date.

Production of copy instead of original

4. If the notice requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
5. The copy of the document may be—
 - (a) a photocopy; or
 - (b) in PDF format; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

Contempt of Board of Inquiry

6. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
7. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
8. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

Protections

9. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to

produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

10. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

ANNEXURE A
Terms of Reference

1. The Board will inquire into:
 - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
 - (i) in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
 - (ii) in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
 - (iii) in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
 - (iv) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
 - (b) If any police officers so acted, their reasons and motives for their actions.
 - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in:
 - (i) making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann; and
 - (ii) his conduct of the preparation of the proceedings for hearings; and
 - (iii) his conduct of the proceedings.
 - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
 - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
 - (f) Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in

the matter of *R v Lehrmann*.

(g) Any matter reasonably incidental to any of the above matters.

2. The Board will report to the Chief Minister by ~~30 June 2023~~ 31 July 2023.

Subpoena 2023/S/0044**Schedule of Questions for Statement****Ms Erin Priestly****Disclosure Certificate**

1. On 27 April 2022, you attended a meeting with Senior Constable Emma Frizzell, Detective Sergeant David Fleming and Skye Jerome where you took a file note (Annexure B). Please detail what you understood the documents that were discussed at this meeting were.
2. On 27 April 2022, you sent an email to Emma Frizzell (Annexure C). Please detail the circumstances of drafting and sending this email. Please indicate whether in drafting this email you had any discussion with the Director of Public Prosecution, Shane Drumgold SC (**the DPP**) and the content of any discussion.

Attach copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. To the extent those communications were verbal outline the parties to the communications and the effect of the words spoken (the **usual particulars**). Include details of the nature of the communication and when the communication occurred.

3. On 16 June 2022, you attended a meeting with Shane Drumgold SC, Skye Jerome, Detective Sergeant Callum Hughes, Senior Constable Emma Frizzell, Detective Leading Senior Constable Trent Madders, Stephanie Mackenzie [REDACTED] and Helen Drew where you took a file note (Annexure D). Please detail what you understood were the documents that were discussed at this meeting.
4. On 20 June 2022 you received an email from Stephanie Mackenzie with several attachments (Annexure E). Please indicate whether this was the first time these documents had been provided to you. If these documents had previously been provided to you please detail when and how you had previously been provided with these documents.

5. Please provide details of any communication you had with the DPP regarding the content or nature of the documents attached to the email correspondence at Annexure E, prior to responding to Stephanie Mackenzie on 21 June 2022 (Annexure F).

Attach copies any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. To the extent communications were verbal provide the usual particulars.



FILE NOTE		
Matter: 202113941 - LEHRMANN.B		
Author: Erin Priestly	Date: 27 April 2022	Time:
<input type="checkbox"/> Court attendance <input type="checkbox"/> telephone attendance <input type="checkbox"/> conference		
Further action required:		
<input type="checkbox"/> yes <input type="checkbox"/> no		

Meeting with AFP

Present: Emma Frizzell, David Fleming, Skye Jerome, Erin Priestly

- Outstanding -

- Statement from Telcos regarding activity on the phone – AFP still waiting on advice on who can speak to that, DPP reiterated would like statement otherwise asking jury to speculate
- Blue Notebook Folder information – EF advised spoke to ██████ (did Cellebrite download), when doing download, does not itemise folders images sit in, just gives dump of photos, ██████ trying to find out where title folder came from and determine what sat under that folder
 - Did not take images of folder and what's in folder before doing full download
 - DPP asked forensics to do this as matter of urgency – AFP to chase digital
 - DPP asked ██████ to look at exhibit immediately to verify which photos in folder
 - AFP – found info going to make USB and triage (update during meeting) – **AFP to bring it over**
- Statement from ██████ – did not come through on 29 March 2022
- Lisa Wilkinson – still waiting to hear back from Legal about time to do statement
- Sam Maiden – reaching out to her Legal re: advice
 - Nature of evidence – DPP after what Brittany disclosed to her (complaint witness)
- Mueller/Chew's statements by end of the week
- Defence Statement – emails without content – statement/gateway locks

- Further evidence identified by investigators during – AFP Legal want DPP to look at and determine whether want disclosure or put on disclosure certificate
 - o DPP – need to talk to Director, hard to comment on documents haven't seen, as soon as receive them in our possession and have to disclose.
 - o AFP asked whether want to look at them to determine disclosure
 - o DPP asked what documents are – internal documents from AFP and includes individual officers assessment of strengths/weakness of case
 - o AFP confirmed does not introduce any new material
 - o DPP to confirm once spoken to Director
- AFP confirmed original brief disclosed to defence has been forensically examined – preliminary advice is nothing has been altered on brief
- DPP to confirm whether need full Cellebrite – full redaction of Higgins report
- 25 February 2021 notes of Emma Frizzell – p 48 of first statement/notes 'it was advised...before she reports it to the media'

Conversation with Shane afterwards

- Don't want to disclose AFP internal documents – not relevant
- Happy to send locked USB via registered post
- No subpoena for Sam Maiden and Lisa Wilkinson without statement
- Happy for full Cellebrite to be disclosed – *Edwards* HCA decision – EP to make clear redacted/locked

From: [Frizzell, Emma](#)
To: [Priestly, Erin](#)
Cc: [SVC_DPPCases](#); [Madders, Trent](#); [Jerome, Skye](#); [Fleming, David](#)
Subject: RE: R v Lehmann - DPP update - 202113941 [SEC=OFFICIAL]
Date: Wednesday, 27 April 2022 5:16:31 PM
Attachments: [image004.png](#)

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

Good afternoon Erin,

Thank you for the advice – it's greatly appreciated.

This afternoon I advised I would provide the contents of the 'Higgins matter blue notebook' and [REDACTED] statement tomorrow. Could I delay this until Friday to allow me time to amend the disclosure statement and prepare the download of the full celebrite reports of both Ms Higgins (redacted) and Mr Lehmann's mobile devices to USB? I'm happy to deliver separately if required.

Also of note, I incorrectly advised the statement of [REDACTED] cover's off on the CCTV within APH (his statement relates to the ARH entry logs). That information is contained in the statement of [REDACTED] which was provided to your office in March 22.

Kind regards,
Em

SENIOR CONSTABLE EMMA FRIZZELL
 CRIMINAL INVESTIGATIONS - SOCA - TEAM 1
 ACT POLICING
 Tel: +61 [REDACTED]
www.afp.gov.au



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The Australian Federal Police acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the elders past, present and emerging.



From: Priestly, Erin <[REDACTED]@act.gov.au>
Sent: Wednesday, 27 April 2022 4:51 PM
To: Frizzell, Emma [REDACTED] u>
Cc: SVC_DPPCases <[REDACTED]@act.gov.au>; Madders, Trent <[REDACTED] u>;

Jerome, Skye <[REDACTED]@act.gov.au>
Subject: R v Lehrmann - DPP update - 202113941

OFFICIAL

Hi Emma

Thank you for meeting with us today.

We have spoken to Shane and confirm the following:

1. The DPP is of the view that the internal AFP documents discussed today at the meeting are not disclosable. Could they please be placed on the updated disclosure certificate?
2. The DPP would like to disclose the full Cellebrite download of each of the phones. The complainant's Cellebrite report will need to be redacted and locked. There is no need to redact the defendant's Cellebrite report.

Kind regards



Erin Priestly
 Senior Prosecutor
 Office of the Director of Public Prosecutions (ACT)
 GPO Box 595, Canberra ACT 2601 (DX 5725)
 T: [REDACTED] (Direct)
 T: (02) 6207 5399 (Reception)
 E: [REDACTED]@act.gov.au
 W: www.dpp.act.gov.au

For a full range of victims rights, please go to www.dpp.act.gov.au and go to the Witnesses and Victims link.

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FILE NOTE		
Matter: 202113941 - LEHRMANN.B		
Author: Erin Priestly	Date:16 June 2022	Time:
<input type="checkbox"/> Court attendance <input type="checkbox"/> telephone attendance <input type="checkbox"/> conference		
Further action required:		
<input type="checkbox"/> yes <input type="checkbox"/> no		

Teleconference

Present: SD, SJ, EP, Callum Hughes, Emma Frizzell, Trent Madders, Stephanie McKenzie, [REDACTED] and Helen Drew (AFP Legal)

- Meeting requested by AFP re: request for disclosure and subpoena received
- Celebrite report Higgins mobile phone
 - 2 reports for 2 phones – DPP confirms expect relates to her confidential information that cannot be disclosed, personal information/contacts etc.
 - DPP – redactions stuff that can't be disclosed, would be breach of 14F of VoC Act
 - DPP drew AFP attention to disclosure policy
- iCloud data and Google drive data
 - Excel spreadsheet only for google drive data– Celebrite can't be created
 - Would need expert to explain
 - iCloud can produce a PDF type document
 - DPP – put pause on iCloud and Google – have asked them to narrow it and are yet to hear back
- Investigative Review documents - two issues with investigative documents
 - DPP request for advice + attached spreadsheet with summary of AFP obligations – seems to be subject to LPP
 - AFP identified another internal document – tactical investigative review done June 2021 to identify what material outstanding etc.
 - AFP identified AFP media plan
 - AFP proposed sending those documents over to get DPP view on disclosability – DPP to have a look
 - AFP proposed providing overview of case log so defence can determine which items they are interested in
 - Defence have declined to narrow disclosure request for PROMIS records – DPP said will have to decline disclosure request
 - **DPP to action – unless they can narrow what they are after will not be able to comply**

- DPP position – volume of google, iCloud, AFP records too significant to disclose, not all of it may be relevant
- Memoir, Sharaz phone, Gatjens – don't hold records in relation to that
 - DPP confirmed can ignore this request
 - Relevant portion book disclosed by Higgins' lawyer
- AFP travelling to Victoria Monday to obtain pre-recording meeting with Wilkinson and Higgins
- DPP – mention of two Cellebrite reports of Higgins' phone – we are only aware of one Cellebrite report – AFP clarified two reports mean redacted/unredacted

From: Drumgold, Shane
Sent: Tue, 21 Jun 2022 08:27:54 +1000
To: Priestly, Erin
Cc: Jerome, Skye; Greig, Mitchell
Subject: RE: Operation COVINA - Investigative review documents
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

OFFICIAL

I believe these documents are preparatory to confidential communications between DPP and AFP for the dominant purpose of providing legal advice, and are not disclosable pursuant to s118 Evidence Act 2011.



Shane Drumgold SC
Director
Office of the Director of Public Prosecutions (ACT)
GPO Box 595, Canberra ACT 2601 (DX 5725)
T: REDACTED (Direct line)
T: [REDACTED]
M: [REDACTED]
E: REDACTED@act.gov.au
E: REDACTED@act.gov.au (EO)
W: www.dpp.act.gov.au

For a full range of victims rights, please go to www.dpp.act.gov.au and follow the Witnesses and Victims link.

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**We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people
We acknowledge and respect their continuing culture and the contribution they make
to the life of this city and this region**

Artwork by Ngarrindjeri artist Jordan Lovegrove

From: Priestly, Erin <REDACTED@act.gov.au>
Sent: Monday, 20 June 2022 8:19 PM
To: Drumgold, Shane <REDACTED@act.gov.au>
Cc: Jerome, Skye <REDACTED@act.gov.au>; Greig, Mitchell <REDACTED@act.gov.au>
Subject: Fwd: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

OFFICIAL

OFFICIAL

Hi Shane

Please see below request for advice and attached documents.

Further, I understand the AFP will not be taking any steps to obtain documents not in their possession- which I understand is a full Cellebrite download of SHARAZ' phone and a draft of the HIGGINS memoir. Are you content with this approach? If so, I will advise defence.

Thanks
Erin

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From: [REDACTED] Stephanie [REDACTED] <[REDACTED]@afp.gov.au>
Sent: Monday, June 20, 2022 7:10 pm
To: Priestly, Erin <[REDACTED]@act.gov.au>
Cc: [REDACTED] Shelley <[REDACTED]@afp.gov.au>; [REDACTED] Helen [REDACTED] <[REDACTED]@afp.gov.au>; Hughes, Callum [REDACTED] <[REDACTED]@afp.gov.au>; Frizzell, Emma [REDACTED] <[REDACTED]@afp.gov.au>; Madders, Trent [REDACTED] <[REDACTED]@afp.gov.au>; Fleming, David <[REDACTED]@afp.gov.au>
Subject: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

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**OFFICIAL:Sensitive
Legal privilege**

Dear Erin

Further to our meeting last week, please find attached the following documents which we are advised by ACT Policing fall within the description of "investigative review documents" in the disclosure request received from the defence in this matter. We are providing these to you for the purpose of advice as to whether they should be disclosed in the proceedings. The documents are as follows:

4 June 2021 – minute from Marcus Boorman to DCPO-R titled "Op Covina Direction/ Decision – Alleged sexual assault Australian Parliament House 23 March 2019"

7 June 2021 – executive brief from Scott Muller to Michael Chew titled "Seeking direction in relation to Operation COVINA – alleged sexual intercourse without consent, Australian Parliament House 23 March 2019, and completed cover sheet.

2 August 2021 – investigation review conducted by Cmdr [REDACTED]

Undated - document titled "identified discrepancies"; and

Undated - document titled "review doc".

We understand the Director has previously received the documents dated 4 June 2021 and 7 June 2021 in the context of being asked to provide advice and considers in that context the documents are subject to LPP. We would be grateful if you could confirm that these are the same documents and that the Director's position is that they are privileged.

Assuming at this stage the Director's position is that the first two documents should not be disclosed because they are subject to LPP, we note that if disclosure of the documents is pressed by the defence, there is a potential argument that other copies of the documents in the hands of the AFP are not privileged. The argument would be that prior to being provided to the Director, these documents were documents prepared for the purpose of internal AFP briefing and guidance, and that copies of the documents held by the AFP are not privileged because they did not involve communications with a legal advisor and were not made for the dominant purpose of obtaining legal advice or for use in, or for the purposes of litigation proceedings. Grateful if you could advise whether you consider this relevant in the current circumstances.

We do not believe you have previously been provided with the third, fourth or fifth documents, in the context of a request for advice or otherwise, and it appears to us that the documents would be disclosable, but will defer to your office's view on this.

Please note some documents have legal professional privilege claims marked up. However, to enable you to see the LPP content, we have not applied these redactions. Should the documents be disclosed to defence, please apply the LPP redactions to the following documents:

Investigation reviewed conducted by Cmdr [REDACTED] dated 2 August 2021

Higgins brief response by DCRO

As detailed in Emma Frizzell's email, ACT Policing will provide you with the other documents captured by the disclosure request.

Aside from the above, as mentioned in our teleconference on Thursday, ACT Policing will not be taking any steps to source material sought in the disclosure request which is not currently in our possession.

Kind regards

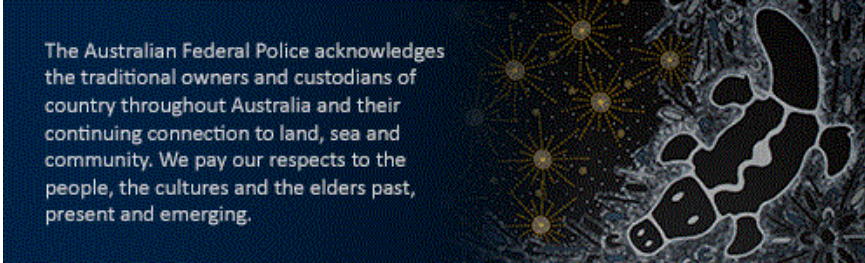
Stephanie

STEPHANIE [REDACTED]
LAWYER – AFP LEGAL
CHIEF LEGAL COUNSEL

[REDACTED]
www.afp.gov.au



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AFP Web site: <http://www.afp.gov.au>

From: [Jerome, Skye](#)
To: [Priestly, Erin](#); [Drumgold, Shane](#)
Cc: [Greig, Mitchell](#)
Subject: Re: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]
Date: Tuesday, 21 June 2022 5:15:09 AM

OFFICIAL

OFFICIAL

Hi everyone

I think these documents are not disclosable. It is someone's opinion on the weaknesses of the case.

Kind regards

Skye

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From: Priestly, Erin <[REDACTED]@act.gov.au>
Sent: Monday, June 20, 2022 8:19:13 PM
To: Drumgold, Shane <[REDACTED]@act.gov.au>
Cc: Jerome, Skye <[REDACTED]@act.gov.au>; Greig, Mitchell <[REDACTED]@act.gov.au>
Subject: Fwd: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

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Thanks
Erin

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From: McKenzie, Stephanie <[REDACTED]>
Sent: Monday, June 20, 2022 7:10 pm

To: Priestly, Erin <[REDACTED]@act.gov.au>
Cc: Miller, Shelley <[REDACTED]>; Drew, Helen <[REDACTED]>;
Hughes, Callum <[REDACTED]> Frizzell, Emma
[REDACTED] Madders, Trent <[REDACTED]>; Fleming,
David <[REDACTED]>
Subject: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive,
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- Undated - document titled "identified discrepancies"; and
- Undated - document titled "review doc".

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We do not believe you have previously been provided with the third, fourth or fifth documents, in the context of a request for advice or otherwise, and it appears to us that the documents

would be disclosable, but will defer to your office's view on this.

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- Investigation reviewed conducted by Cmdr Smith dated 2 August 2021
- Higgins brief response by DCRO

As detailed in Emma Frizzell's email, ACT Policing will provide you with the other documents captured by the disclosure request.

Aside from the above, as mentioned in our teleconference on Thursday, ACT Policing will not be taking any steps to source material sought in the disclosure request which is not currently in our possession.

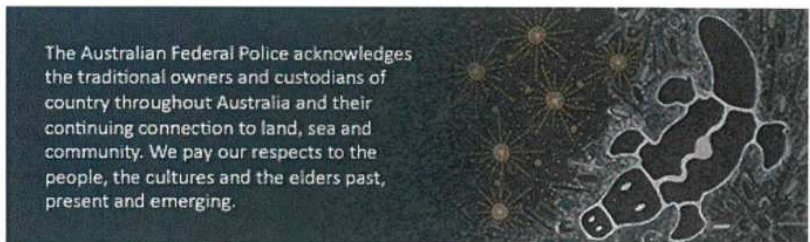
Kind regards
Stephanie

STEPHANIE MCKENZIE
LAWYER – AFP LEGAL
CHIEF LEGAL COUNSEL

REDACTED
www.afp.gov.au



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AFP Web site: <http://www.afp.gov.au>

From: [Priestly, Erin](#)
To: [McKenzie, Stephanie](#)
Cc: [Miller, Shelley](#); [Drew, Helen](#); [Hughes, Callum](#); [Frizzell, Emma](#); [Madders, Trent](#); [Fleming, David](#); [Greig, Mitchell](#); [SVC_DPPCases](#)
Subject: RE: Operation COVINA - Investigative review documents - 202113941 [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]
Date: Tuesday, 21 June 2022 10:45:00 AM
Attachments: [image003.png](#)

OFFICIAL

Dear Stephanie

Thank you for your email.

The Director has reviewed this material and is of the view that the documents are preparatory to confidential communications between DPP and AFP for the dominant purpose of providing legal advice, and are not disclosable pursuant to s 118 of the *Evidence Act 2011*. Further, where the documents amount to inadmissible opinion evidence, it would not seem to be relevant or possibly relevant to an issue in the case.

Kind regards



Erin Priestly

Senior Prosecutor
 Office of the Director of Public Prosecutions (ACT)
 GPO Box 595, Canberra ACT 2601 (DX 5725)
T: **REDACTED** (Direct)
T: (02) 6207 5399 (Reception)
E: **REDACTED**@act.gov.au
W: www.dpp.act.gov.au

For a full range of victims rights, please go to www.dpp.act.gov.au and go to the Witnesses and Victims link.

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To: Priestly, Erin <**REDACTED**@act.gov.au>
Cc: Miller, Shelley <[REDACTED]>; Drew, Helen <[REDACTED]>;
 Hughes, Callum <[REDACTED]>; Frizzell, Emma <[REDACTED]>;
 Madders, Trent <[REDACTED]>; Fleming, David <[REDACTED]>
Subject: Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

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**OFFICIAL: Sensitive
Legal privilege**

Dear Erin

Further to our meeting last week, please find attached the following documents which we are advised by ACT Policing fall within the description of “investigative review documents” in the disclosure request received from the defence in this matter. We are providing these to you for the purpose of advice as to whether they should be disclosed in the proceedings. The documents are as follows:

- 4 June 2021 – minute from Marcus Boorman to DCPO-R titled “Op Covina Direction/ Decision – Alleged sexual assault Australian Parliament House 23 March 2019”
- 7 June 2021 – executive brief from Scott Muller to Michael Chew titled “Seeking direction in relation to Operation COVINA – alleged sexual intercourse without consent, Australian Parliament House 23 March 2019, and completed cover sheet.
- 2 August 2021 – investigation review conducted by Cmdr Smith.
- Undated - document titled “identified discrepancies”; and
- Undated - document titled “review doc”.

We understand the Director has previously received the documents dated 4 June 2021 and 7 June 2021 in the context of being asked to provide advice and considers in that context the documents are subject to LPP. We would be grateful if you could confirm that these are the same documents and that the Director’s position is that they are privileged.

Assuming at this stage the Director’s position is that the first two documents should not be disclosed because they are subject to LPP, we note that if disclosure of the documents is pressed by the defence, there is a potential argument that other copies of the documents in the hands of the AFP are not privileged. The argument would be that prior to being provided to the Director, these documents were documents prepared for the purpose of internal AFP briefing and guidance, and that copies of the documents held by the AFP are not privileged because they did not involve communications with a legal advisor and were not made for the dominant purpose of obtaining legal advice or for use in, or for the purposes of litigation proceedings. Grateful if you could advise whether you consider this relevant in the current circumstances.

We do not believe you have previously been provided with the third, fourth or fifth documents, in the context of a request for advice or otherwise, and it appears to us that the documents would be disclosable, but will defer to your office’s view on this.

Please note some documents have legal professional privilege claims marked up. However, to enable you to see the LPP content, we have not applied these redactions. Should the documents be disclosed to defence, please apply the LPP redactions to the following documents:

- *Investigation reviewed conducted by Cmdr Smith dated 2 August 2021*
- *Higgins brief response by DCRO*

As detailed in Emma Frizzell’s email, ACT Policing will provide you with the other documents captured by the disclosure request.

Aside from the above, as mentioned in our teleconference on Thursday, ACT Policing will not be

taking any steps to source material sought in the disclosure request which is not currently in our possession.

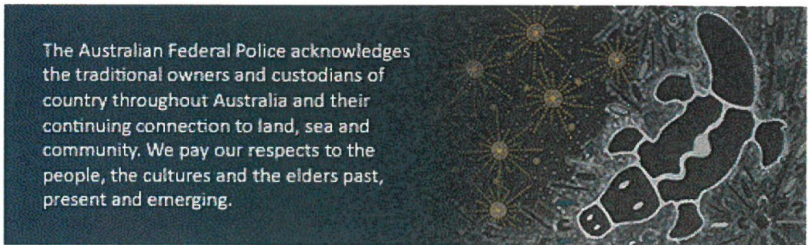
Kind regards
Stephanie

STEPHANIE MCKENZIE
LAWYER - AFP LEGAL
CHIEF LEGAL COUNSEL

REDACTED
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