

FW: legal advice on ROR: Urgent media query: DPP complaint to CPO over Lehrmann matter [SEC=OFFICIAL]

From: "Gaughan, Neil" [REDACTED]
To: "Crozier, Peter" [REDACTED], "Cameron, Joanne" [REDACTED]
Date: Thu, 08 Dec 2022 12:34:26 +1100

OFFICIAL

Here we go
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From: ACT-Police-Media [REDACTED]
 Sent: Thursday, 8 December 2022 12:28 PM
 To: Gaughan, Neil [REDACTED]@afp.gov.au>
 Cc: CPOACT <[REDACTED]> ACT-Police-Media [REDACTED]
 Subject: FW: legal advice on ROR: Urgent media query: DPP complaint to CPO over Lehrmann matter [SEC=OFFICIAL]

OFFICIAL

Good afternoon Sir,

Please see below a media enquiry sent to us a short time ago from The Guardian.

Happy to discuss response options.

Regards

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From: Christopher Knaus <[REDACTED]>
 Sent: Thursday, 8 December 2022 11:43 AM
 To: ACT-Police-Media <[REDACTED]>
 Subject: Re: legal advice on ROR: Urgent media query: DPP complaint to CPO over Lehrmann matter

Hi team,

Hope you're well.

I'm seeking a response to serious allegations made in a letter of complaint by DPP Shane Drumgold to CPO Neil Gaughan on 1 November, which I obtained through a freedom of information request.

In the letter, Drumgold makes a series of allegations about police conduct during the case, which I wanted to put to you for response.

They are as follows:

- Drumgold alleges police officers engaged in "a very clear campaign to pressure me" not to prosecute the alleged rape of Brittany Higgins. He has alleged there was "inappropriate interference" and he felt that investigators were "clearly aligned with the successful defence of this matter".
- Drumgold alleges that he holds "serious concerns" over "what I perceive as some quite clear investigator interference in the criminal justice process" and alleged "key AFP members have had a strong desire for this matter not to proceed to

charge". He says "Then when charges resulted, the [investigators'] interests have clearly aligned with the successful defence of this matter rather than its prosecution... As a corollary however, there has now been over one and a half years of consistent and inappropriate interference by investigators, firstly directed towards my independence with a very clear campaign to pressure me to agree with the investigators desire not to charge, then during the conduct of this trial itself, and finally attempting to influence any decision on a retrial."

- Drumgold details three meetings with investigators, including Detective Inspector Marcus Boorman and Detective Superintendent Scott Moller, held across March, April, and June. He said in the first meeting with Boorman and SACAT, investigators had used selective evidence and "loaded characterisations" in an attempt to persuade him to agree with their position, which was that charges should not be laid. In subsequent meetings in April and June last year, Drumgold alleged that investigators continued to use mischaracterisations, cherry-picked evidence, and inaccurate select summaries of evidence to suggest weaknesses in the case and convince him to support their view that the case should not proceed. In the final meeting in June, he alleges police presented him with a brief of evidence and a letter that purported to be a request for his advice on the case. Drumgold said the letter contained "further mischaracterisations and other inaccurate select summaries of evidence" and was used to advance a list of reasons why he should agree with the police position. He wrote: "This document contained blatant misrepresentations of evidence such as suggestions that key evidence was deliberately deleted by the complainant, a proposition not supported by the tested evidence at trial, as well as a list of evidence that is clearly inadmissible in trial. The letter concludes with a further overt attempt to apply pressure to the conclusion of my resulting advice."

- Drumgold uses the letter to call for a public inquiry into police conduct. "I am of the view that at the conclusion of the trial, there should be a public enquiry into both political and police conduct in this matter," he said. He also requested that police cease any involvement in the then looming retrial, save for their roles as witnesses.

- He accuses investigators of bullying Higgins and said she had to be insulated from contact with them. He complained that this affected the conduct of the trial. "The complainant has long expressed concerns that during the investigation stage, she also felt bullied by police who she felt were pressuring her into discontinuing the complaint. This is an observation corroborated by at least two of her support people. Although this is a matter for her to raise directly with the AFP, it is relevant for our purposes as it impacted the trial process, as she presented as highly anxious in dealing with either the police or by extension, the DPP."

- Higgins then communicated with police via victims of crime commissioner, Heidi Yates, according to the letter. He says police then sought to make Yates a witness by asking her "highly unusual" questions in a formal interview. "On 2 October 2021, I received a letter from yourself [Gaughan], stating that because she was now a witness, the AFP could no longer communicate through her. This was a highly unusual step as the complainant was also a witness, yet police still had extensive contact with her until she requested all contact be made through the Victim of Crime Commissioner."

- He also alleged investigators had direct contact with Lehrmann's defence team during the trial. He said police were regularly meeting with Lehrmann's defence team during breaks in proceedings, and that the defence team had been asking police directly to conduct further investigations into some issues. He said this was discovered when prosecutors received an unsolicited email from one of the investigators on 13 October 2022, outlining some additional points to their evidence. Another investigator followed up the email the next day, stating: "I have also attached the email... sent yesterday regarding the Phillip Medical Centre enquiries," the email said. "The bosses just want to confirm it has been seen and passed onto defence." About 16 minutes later, the sender attempted to recall the email and replace the words "The bosses just want to confirm" with "I'm just checking".

My questions are:

- how does ACT Policing respond to the concerns raised in Drumgold's letter? Does it dispute the accuracy of any of the points raised above?
- what is the CPO's position on Drumgold's call for a public inquiry? Does he support such a call?
- did investigators pressure the DPP to not pursue the case? Did they selectively use and mischaracterise evidence to try to convince him the case was weak?
- did they bully Ms Higgins? Why was Heidi Yates made a witness?
- why were police having direct contact with Lehrmann's defence team? Is this appropriate?
- this letter appears to show a toxic relationship between elements of the DPP and the AFP, do you have any comment on that observation?

My hard deadline for this is 1.30pm today - I would appreciate it if you could provide me with a written statement in response to the above so that we can fairly reflect the ACT police and any individual officers' positions in any published story.

Many thanks,

Christopher Knaus
Reporter
The Guardian | Australia

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twitter: @knausc

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