

OFFICIAL:Sensitive**Investigation review**

ACT Policing - Chief Police Officer
Deputy Commissioner Neil Gaughan APM

Title of review

Review of Operation Covina (PROMIS 6381473)

Purpose of the review:

The purpose of the review is to undertake a tactical investigative review of Operation Covina in line with the Australian Federal Police (AFP) review standard.

The review has been initiated by ACT Policing Senior Executive, following an investigation into an allegation of a sexual assault occurring at Australian Parliament House (APH) on 23 March 2019.

Scope of the review:

The scope of the review will address the following:

- Further avenues of inquiry.
- Consideration of the material already obtained, focussing on the current draft Statement of Facts (SOF), Record of Interview (ROI), Evidence in Chief Interviews (EICIs), statements, Record of Conversations (ROC) and associated entries, documents and/or recordings.
- Any further considerations that may inform the investigation.

The Terms of Reference are attached - Annexure A.

Plan and methodology:

The review examined electronic records pertaining to Operation Covina available within the ACT Policing - Sexual Assault and Child Abuse Team (SACAT) shared drive and associated PROMIS case, 6381473, that were uploaded prior to the 28 July 2021. Not all material contained within the shared drive or PROMIS case was reviewed.

The drive location was identified as:

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The tactical review will be conducted in two phases:

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Phase one: Review the information obtained throughout the investigation, with particular focus on the current draft SOF, ROI, EICs, statements, ROCs and associated entries, documents and/or recordings.

Phase two: Analyse the avenues of inquiry and consider any further investigative considerations that may assist in obtaining relevant information.

The review was conducted over four days.

Describe the reviewers:

Commander Andrew SMITH [REDACTED]; Detective Sergeant Mark [REDACTED] Detective Sergeant Matt [REDACTED] Acting Sergeant Lauren GILLILAND [REDACTED]

Case information

PROMIS number	6381473	Operation name	Covina
Date accepted	4 April 2019	Estimated completion date	Ongoing
CCPM priority	Not applicable	CCPM impact	Not applicable
CCPM client Impact	Not applicable	CCPM value to AFP	Not applicable
Office	ACT – Criminal Investigations	Function	ACT Policing
Crime type	Sexual Assault	Team	SACAT

Briefly summarise the investigation to date:

On 1 April 2019, members of the AFP Protection Liaison Team, based at APH in Canberra, met with Ms Brittany Higgins (Ms Higgins), a Ministerial staff member employed within the office of Senator the Honourable, Linda Reynolds (Minister Reynolds), Minister for Defence Industry. Ms Higgins disclosed to AFP members that she had been the victim of a sexual assault by another Ministerial staff member whom she identified as Mr Bruce Lehrmann (Mr Lehrmann). At the time, Mr Lehrmann was also employed within Minister Reynold's office. It was alleged the incident occurred on the morning of the 23 March 2019, within Minister Reynolds' office, APH, Australian Capital Territory (ACT).

Due to the nature of the allegation, the matter was referred to ACT Policing. SACAT members met with Ms Higgins on 5 April 2019, to commence an investigation into the matter.

On 13 April 2019, Ms Higgins advised via email that she did not wish to proceed with the matter. Notwithstanding Ms Higgins decision, inquiries continued in respect of perishable evidence, including Closed Circuit Television (CCTV) footage.

On 5 February 2021, the investigation was re-activated at the request of Ms Higgins.

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Material has been obtained that shows Ms Higgins and Mr Lehrmann attended APH and entered their office of employment at approximately 1:41am on 23 March 2019.

In Mr Lehrmanns ROI, he stated that following entry to their office of employment, he and Ms Higgins went to separate areas within the office and had no further interactions with each other on that day. Mr Lehrmann stated whilst he was in his office he conducted some work in line with his duties and collected some of his personal belongings before departing APH.

In Ms Higgins EICs, she stated that following entry to their office of employment, she moved from sitting by the window to a lounge located within Minister Reynolds' office. There, she laid down and fell asleep. Ms Higgins was later awoken by feeling pressure on her right leg. When she opened her eyes she saw Mr Lehrmann above her engaging in penile/vaginal intercourse. She said "no" to Mr Lehrmann a number of times, but he continued. After an unknown amount of time, Mr Lehrmann got off Ms Higgins, did not say anything to her and left the room. Ms Higgins states she has then fallen back to sleep or passed out.

CCTV footage shows Mr Lehrmann departed APH at 2:33am and Ms Higgins departed APH at 10:01am on 23 March 2019.

Conduct of review

Describe your findings:

Based upon the material considered, the review team has formed an opinion that the investigation was conducted in a thorough, reasonable and proportionate manner, adhering to the lawful requirements for interviewing suspects and witnesses. The exercise of search, seizure and examination of material was lawful, utilising either consent or warrant. The investigation team applied a critical and analytical mindset to the material which identified their avenues of inquiry.

The review team did not identify any significant additional avenues of inquiry. There is nothing to suggest the investigation was inadequate or unprofessional.

The material reviewed reveals:

The accounts of the evening leading up to attending APH are largely consistent. The differences in account are:

- The level of physical contact between Ms Higgins and Mr Lehrmann.

Police notes taken during initial reporting of the incident on 1 April 2019, record that Ms Higgins disclosed that touching and hugging did take place at a club between Mr Lehrmann and herself, prior to their arrival at APH.

During the ROC, conducted with [REDACTED], she stated she observed kissing and touching between Mr Lehrmann and Ms Higgins at 88MPH nightclub in the Canberra City. This is corroborated by a text message sent by [REDACTED] on 23 March 2019.

Ms Higgins EICs and Mr Lehrmanns ROI did not describe the kissing, touching and/or hugging taking place at 88MPH.

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- The reasons for returning to APH.

There is differing accounts as to why Ms Higgins and Mr Lehrmann returned to APH. Numerous accounts were identified, being consumption of alcohol, conducting work, collection of documents or collecting personal belongings.

Ms Fiona Brown, Chief of Staff to Minister Reynolds, stated in her ROC that Mr Lehrmann's purpose for returning to APH was to consume Whiskey.

- The level of intoxication of Ms Higgins and Mr Lehrmann.

Ms Higgins describes her level of intoxication as being high, including falling over and unable to recall some events of the night. Mr Lehrmann's account of his level of intoxication varied but stated he did not observe anyone so intoxicated that they could not function.

CCTV and accounts of witnesses are inconclusive regarding the level of intoxication, although an APH security officer described Ms Higgins as being intoxicated upon her entry to APH.

There is corroborating material that indicates both Ms Higgins and Mr Lehrmann had consumed alcohol.

The review team is aware that inquiries are continuing in relation to the Uber records of Mr Lehrmann with a focus on arrival at APH.

There are no further avenues of inquiry that the review team can recommend in respect to the activities prior to attending APH.

Within the Ministerial suite there are two different accounts of what occurred between 1:48am and 2:31am on 23 March 2019.

Ms Higgins' account is obtained through two EICs conducted in 2021, during which she stated that she was sexually assaulted by Mr Lehrmann.

Mr Lehrmann's account is obtained through a formal ROI, conducted in 2021, during which he denied any physical contact or having sexual intercourse with Ms Higgins within APH.

ROC with [REDACTED] indicated that about 4:20am, Ms Higgins was observed laying fully naked on the lounge. She observed her dress and shoes to be on the floor.

ROC with [REDACTED] did not identify any significant cleaning required of the Ministerial suite on the afternoon of 23 March 2019.

The review team has viewed CCTV footage of Ms Higgins and Mr Lehrmann's entry and exit of APH, it is noted that there is no footage of either Ms Higgins or Mr Lehrmann exiting the Ministerial office.

It is recommended that further inquiries be conducted to obtain this footage. Other than the footage, there are no further avenues of inquiry that the review team can recommend in respect to what occurred within the Ministerial office.

Due to the time elapsed between the alleged offence taking place and EICs being conducted there is:

- No forensic evidence of sexual assault;
- No physical evidence of sexual assault; and
- No medical evidence of sexual assault.

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There are no further avenues of inquiry that the review team can recommend in respect to what occurred within the Ministerial office to obtain forensic, physical or medical evidence.

Since the investigation recommenced on 5 February 2021, SACAT have undertaken extensive inquiries in relation to this matter. This has included numerous ROCs, statements, searches and inquiries in relation to obtaining evidentiary material.

The primary material are the accounts provided by Ms Higgins and Mr Lehrmann. The only direct material of a sexual assault are the disclosures and EICIs of Ms Higgins.

Based upon the current draft SOF, ROI, EICIs, statements, ROCs and associated entries, documents and/or recordings, it is highly probable the credibility of witnesses will be an issue in any proceedings. The review team acknowledges that the Court is the proper authority for these issues to be determined. Issues may include:

- Time between the allegation, formal EICIs and the ROI being obtained - difficulty in determining between a direct memory or a memory informed by later conversations;
- Levels of intoxication; and
- Inconsistencies between material provided by various persons involved.

The review team is aware that following Ms Higgins' second EICI, she provided her mobile telephone for the purpose of a forensic examination. There are entries of communications relating to the matter that should be further investigated. The review team acknowledges it is not best practice to conduct multiple EICIs and that this risk should be balanced against potential evidence collection.

Given this risk, **the review team recommend SACAT discuss any avenues that may allow Ms Higgins to provide further comment with the ACT Office of the Director of Public Prosecutions (ACT DPP).**

The review team is aware that a brief of evidence has been provided to the ACT DPP for their consideration. As this process has already commenced, **the review team recommend that SACAT continue to liaise with the ACT DPP.**

This investigation is complex, and there continues to be a high level of risk due to the associated political and media environment. **The review team recommends that adequate resources continue to be deployed in support of the investigation.**

Follow up action

The review team recommends the following:

- Inquiries continue in relation to the Uber records of Mr Lehrmann and any account of the Uber driver with a focus on travel and arrival at APH.
- Inquiries continue in relation to the CCTV footage of Ms Higgins and Mr Lehrmann exiting the Ministerial office within APH.
- Consultation with the ACT DPP on whether a further EICI is offered to Ms Higgins.
- Continue consultation with ACT DPP with regards to decisions relating to a prosecution.
- Adequate resources continue to be deployed in support of the investigation.

Andrew SMITH
Commander

2 August 2021