

Subpoena Number: 2023/S/0042

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Ms Stephanie McKenzie
Of: Australian Federal Police
C/- Mr Tony Giugni
Australian Government Solicitor
4 National Circuit
Barton ACT 2600

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 6 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: 1 June 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 at **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/0042**Schedule of Questions for Statement****Ms Stephanie McKenzie****Current Employment**

1. What is your current position within the Australian Federal Police (**AFP**)/Australian Capital Territory (**ACT**) Policing?
2. Outline the job description for your current position. If you have a formal job description, **attach** a copy.
3. **Attach** a current CV.

Interactions with the Director of Public Prosecutions/Office of the Director of Public Prosecutions

4. Whether, to your knowledge, anyone within the AFP legal team advised or communicated to the Director of Public Prosecutions (**DPP**)/Office of the Director of Public Prosecutions (**ODPP**) staff that they had determined that the documents falling under the description 'investigative review documents' or any of the following individual documents were privileged?
 - (a) Minute of Marcus Boorman dated 4 June 2021
 - (b) Executive Briefing of Scott Moller dated 7 June 2021
 - (c) Investigative review dated 2 August 2021
 - (d) Undated document titled "identified discrepancies"
 - (e) Undated document titled "review doc"

If so, provide details of this communication, including who was involved and when it occurred. **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.

5. Whether, to your knowledge, anyone within the AFP legal team advised or communicated to the DPP or ODPP staff that the documents had been placed in schedule 1 on a disclosure certificate?

If so, provide details of this communication, including who was involved, when it occurred and the nature 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.

6. Whether at any stage it was communicated by the DPP (expressly or impliedly) that AFP Legal should obtain the views of the authors of the relevant documents to determine the purpose of the Investigative Review Documents.

If so, provide details of this communication, including who was involved, when it occurred and the nature of the communication. **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.

7. Provide details of your meeting with the DPP and ODPP staff on 19 July 2022. You must include details of the following:
 - (a) the purpose of the meeting;
 - (b) whether the DPP and ODPP staff were informed of the purpose of the meeting? If so, provide details of when the DPP/ODPP were informed of the purpose of the meeting and the nature of what was said;

- (c) your recollection of the meeting including the nature of what was said (and by whom);
- (d) whether advice was sought from the DPP and/or /ODPP staff in relation to whether documents were subject to legal professional privilege. If so, please provide details of;
 - i. what documents were discussed and in what terms;
 - ii. whether the DPP suggested AFP Legal to obtain the views of the authors of those documents in relation to the dominant purpose of the relevant documents. If so, provide details of the nature of the DPP's suggestion;
 - iii. whether you otherwise inferred from the DPP's comments that AFP Legal should obtain the views of the author of the relevant documents in relation to the purpose of the Investigative Review Documents. If so, provide details of why you drew this inference.

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.

Job Title: Lawyer & Senior Lawyer - AFP Legal Operations and Counter Terrorism Team

Job Details

JOB TITLE - Lawyer & Senior Lawyer - AFP Legal Operations and Counter Terrorism Team
EMPLOYMENT TYPE - Ongoing Full time; Temporary Full time. Temporary positions will be for a period of up to 24 months.

LOCATION - VIC; ACT; NSW

AFP BAND & SALARY - AFP Legal Officer Broadband 3 - 8, \$65,890 - \$126,015.00

JOB REFERENCE NUMBER - XXXX

CONTACT OFFICER - Shelley Miller, Personal information or Hailee Personal information

Personal information

APPLICATIONS CLOSE - 11:59pm (AEST) XX/04/2022

This advertisement is to fill current vacancies and create a merit pool for future vacancies arising over the next 12 months.

Australian Federal Police

Policing for a safer Australia - the world is changing, crime is changing, we are changing to meet new challenges.

The mission of the AFP is to provide dynamic and effective law enforcement to the people of Australia. It provides policing throughout Australia in relation to the prevention and detection of crimes against the Commonwealth, its laws and integrity, and community police services to the Community of the ACT.

As an inclusive organisation, the AFP provides opportunity for all Australians to fairly gain employment in the AFP. We appreciate that everyone is unique and acknowledge that diversity in thought leads to greater transparency and improved consideration in our decision making.

Role Summary

Applications are sought from suitably qualified, professional, enthusiastic and committed lawyers wishing to be considered for this opportunity, with a minimum of 1-5 years post admission experience for lawyers and 5+ years post admission experience for senior lawyers. This is an excellent opportunity to join a vibrant legal practice that has a diverse and exciting range of work and internal clients and is committed to the development of its lawyers, and the maintenance of a supportive and flexible working environment. The AFP also provides a generous remuneration package, including six weeks of annual leave per year, four mandatory rest days per year, Christmas/New Year stand-down leave, access to flex-time arrangements, and 15.4% superannuation payments, full details can be found here.

AFP Legal is the AFP's internal legal practice, delivering legal services across the wide spectrum of AFP activities both domestically and overseas. AFP lawyers work in an exciting, dynamic and intellectually challenging environment providing legal advice in areas including criminal law, information law, national security law, dispute resolution, administrative law, employment law, commercial law, and governance.

As an employee of the AFP you will also be required to contribute to the achievement of outcomes in accordance with the regulatory framework, the AFP Code of Conduct and the AFP Governance Instruments. It is expected that the successful applicant will deliver on the core responsibilities and meet any requirements of the position as outlined below.

Role Description & Responsibilities

The AFP Legal Operations and Counter Terrorism Team is responsible for the provision of high quality, cost effective professional legal services that directly support the operational activities of the AFP.

Suitable candidates must meet the requirements of the roles as outlined in the Candidate Information Pack.

Candidate Information Pack

Further information regarding the requirements of these roles, and guidance on the process, can be found in the respective Candidate Information Pack on the AFP website.

Essential Requirements

- All applicants must either hold a current practising certificate or be eligible to apply for one.
- Hold tertiary qualifications in law and possess contemporary relevant legal knowledge and experience.
- A minimum of 1-5 years post admission experience for lawyers and 5+ years post admission experience for senior lawyers.
- A Negative Vetting 1 (Secret) security clearance, or ability to obtain one.

Desirable Requirements

- Experience in prosecutions or other relevant regulatory agencies (State or Commonwealth).
- Experience in Commonwealth criminal law, litigation, subpoenas, Federal law court processes and/or witness protection.
- Experience in information protection and statutory interpretation.
- Experience working in a national security environment.

Additional Information

- Positions may be filled at the AFP Band 3 to 8 levels, within the AFP Legal Officer Broadband 3 - 8, depending upon the skills and experience of the successful candidate.
- **Note:** Current AFP lawyers are not eligible to apply for a promotion or advancement through this process.

Selection Criteria

Band 3-5

- Organising your work, making sound decisions and achieving outcomes
- Communicating and working effectively with other people
- Applying technical knowledge, expertise and skills

Band 6-8

- Achieve results
- Communicates with influence
- Contributes to strategic thinking
- Cultivates productive working relationships
- Shows personal drive and integrity
- Technical knowledge and skills (only required if tech skills will be assessed)

Required Application Documents

As part of your application you will be required to submit the following documents:

- Applicant response (pitch – maximum two pages)
- Resume/CV

Advice for Applicants

Application

All mandatory fields must be completed by the applicant. Applicants must provide all requested documents as outlined above in 'Required Application Documents'.

All requested documents must be uploaded to the online application form and submitted before the closing date and time. Any documents not supplied may result in your application being withdrawn from the

recruitment process.

The applicant response (pitch) should address the selection criteria and work level standards relevant to the role and provide evidence as to why you are the best fit for the position. The work level standards are specific to the band level of the role you are applying for and can assist in guiding you to address the selection criteria to the level required of the role.

Employment Suitability Requirements

Applicants, who are not current AFP employees, that progress to the next stage of an AFP recruitment process will be required to provide the following documents:

- Completed Employment Suitability Questionnaire (ESQ);
- Traffic history for the last 10 years; and
- Proof of Australian citizenship.

Applicants will be advised by AFP Recruitment if they are required to provide this information. We encourage all applicants to review the AFP's minimum employment requirements and employment suitability standards to ensure that you meet the set requirements before you submit your application. Applicants whom do not meet these requirements, or fail to provide the required documents, will be removed from the recruitment process.

For further information on positions, and other employment opportunities in the AFP, please visit our website.

www.afp.gov.au

OUTSMART CRIME: TAKE THE NEXT STEP NOW

CANDIDATE INFORMATION PACK



AFP
AUSTRALIAN FEDERAL POLICE

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AFP OVERVIEW

The mission of the AFP is to provide dynamic and effective law enforcement to the people of Australia. It provides policing throughout Australia in relation to the prevention and detection of crimes against the Commonwealth, its laws and integrity, and community police services to the Community of the ACT.

The AFP offers a generous remuneration and conditions package, full details can be found [here](#).

As an inclusive organisation, the AFP provides opportunity for all Australians to fairly gain employment in the AFP. We appreciate that everyone is unique and acknowledge that diversity in thought leads to greater transparency and improved consideration in our decision making.

BUSINESS AREA

AFP Legal is the AFP's internal legal practice, delivering legal services across the wide spectrum of AFP activities both domestically and overseas. AFP lawyers work in an exciting, dynamic and intellectually challenging environment providing legal advice in areas including criminal law, information law, national security law, dispute resolution, administrative law, employment law, commercial law, and governance.

AFP Legal is recruiting for current and anticipated vacancies for ongoing and non-ongoing Operations and Counter Terrorism law positions, at the Senior Lawyer (Band 7-8) and Lawyer (Band 3-6) level in the Operations and Counter Terrorism Team.

The Operations and Counter Terrorism Team is responsible for the provision of high quality, cost effective professional legal services that directly support the operational activities of the AFP.

POSITIONS

[Senior Lawyer – Band 7-8 \(\\$108,093 – \\$126,015\)](#)

Senior Lawyers should have 5+ years relevant legal experience.

Senior Lawyers in the Operations and Counter Terrorism Team:

- prepare complex and routine legal advice for internal clients on matters relating to AFP operations and investigations, including, amongst other things:
 - police powers concerning arrest and search;
 - electronic surveillance;
 - the interpretation of criminal offence provisions; and
 - evidence and disclosure.
- provide guidance and mentor more junior lawyers;
- draft supporting documents for and manage litigation relating to the control order scheme in the Criminal Code 1995;
- advise the AFP Executive on matters relating to appearances before Parliamentary committees;
- provide legal support to sensitive investigations and counter terrorism matters;
- assist the AFP in responding to legislative reform proposals; and
- assist with the protection of sensitive AFP information.

A Senior Lawyer is required to:

- have advanced legal technical knowledge;
- deliver high-quality, pragmatic legal advice and products;

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- deal with more complex and challenging matters with minimal supervision;
- represent the AFP in high level discussions and negotiations with external stakeholders;
- demonstrate leadership and integrity in their interactions with team members and internal clients;
- provide an appropriate level of guidance and mentoring to junior lawyers, taking into account individual needs and band levels;
- report to and support the Deputy General Counsel and other team members to create a unified, cohesive and well-functioning team;
- actively contribute to:
 - legislative, governance and policy development; and
 - shaping strategic thinking and harnessing information and opportunities for the broader benefit of the AFP.
- assist AFP Legal management, General Counsel and Chief Counsel in relation to complex matters; and
- maintain currency of legal knowledge and skills through ongoing professional development and learning opportunities outside the formal education process.

Lawyer – Band 3-6 (\$65,890 – \$108,093)

Lawyers should have 1-5 years relevant legal experience.

The Lawyer role requires the provision of timely, well-written and accurate legal advice and support to internal AFP clients in support of the AFP's activities, and compliance with its governance requirements. This includes the following work:

- prepare legal advice for internal clients on matters relating to AFP operations and investigations, including, amongst other things:
 - police powers concerning arrest and search;
 - electronic surveillance;
 - the interpretation of criminal offence provisions; and
 - evidence and disclosure.
- produce and present training material relevant to the AFP powers and obligations under Commonwealth law;
- support and manage litigation relating to the control order scheme in the Criminal Code 1995;
- provide legal support to sensitive investigations and counter terrorism matters;
- assist the AFP in responding to legislative reform proposals; and
- assist with the protection of sensitive AFP information.

A Lawyer in AFP Legal is also expected to:

- deliver high-quality, pragmatic legal advice and products;
- take initiative and work with a significant degree of autonomy, but seek guidance and input as appropriate;
- liaise with AFP clients and take instructions;
- deal with more challenging matters under supervision of a Senior Lawyer;
- assist and support Senior Lawyers including in relation to:
 - high level discussions and negotiations with external stakeholders; and
 - legislative, governance and policy development.
- contribute to AFP Legal strategic and corporate projects; and
- maintain currency in legal knowledge and skills through ongoing professional development and learning opportunities outside the formal education process.

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Essential requirements (applies to both roles)

- You must be an Australian citizen
- All applicants must either hold a current practicing certificate or be eligible to apply for one.
- Hold tertiary qualifications in law and possess contemporary relevant legal knowledge and experience.
- A minimum of 1-5 years post admission experience for lawyers and 5+ years post admission experience for senior lawyers.
- A Negative Vetting 1 (Secret) security clearance, or ability to obtain one.
- Important - The COVID-19 vaccine has been mandated for all AFP employees. Satisfactory proof of vaccination status will be required at the time an offer of employment is made. You will be notified if you need to provide your COVID-19 Vaccination Certificate. Please contact the [Recruitment Team](#) if you wish to discuss the COVID-19 vaccine requirements further.
-

Desirable skills

- Experience in prosecutions or other relevant regulatory agencies (State or Commonwealth).
- Experience in Commonwealth criminal law, litigation, subpoenas, Federal law court processes and/or witness protection.
- Experience in information protection and statutory interpretation.
- Experience working in a national security environment.

Additional Information

- Positions may be filled at the AFP Band 3 to Band 8 levels, within the AFP Legal Officer Broadband 3-8, depending upon the skills and experience of the successful candidate.
- **Note:** Current AFP lawyers are not eligible to apply for a promotion or advancement through this process.
- Temporary positions will be for a period of up to 24 months.

OUR OFFER

This is an excellent opportunity for lawyers wishing to obtain well-rounded experience in a range of operations and counter terrorism issues in a law enforcement environment and to join a vibrant legal practice that:

- has a diverse and exciting range of work and internal clients;
- is committed to the development of its lawyers, and the maintenance of a supportive and flexible working environment;
- provides lawyers with the opportunity to work closely with internal clients to make important contributions to, and have substantial involvement in, major projects.

Remuneration and Benefits

- Commencing salary range of \$65,890 - \$126,015 (AFP Legal Officer Broadband 3 – 8 minimum to maximum) terms and conditions as outlined in the [AFP Enterprise Agreement 2017 - 2020](#) will be provided, including superannuation contribution of 15.4%.
- Generous conditions of six weeks annual leave plus additional rest days, personal leave, paid maternity and adoption leave and access to compassionate leave. Refer to the [AFP Enterprise Agreement 2017 - 2020](#)

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THE APPLICATION PROCESS

The following steps must be completed prior to submitting your application online through MyCareer.

1. Two page pitch

The two page pitch will assess you against the role scope and selection criteria.

Ensure your pitch is written with examples of ability to demonstrate capability at the AFP work level standards relevant to the band level of the role you are applying for.

The panel is only able to consider the evidence they receive from candidates, therefore ensure your pitch clearly demonstrates your ability and suitability to the role.

2. Curriculum Vitae (CV)

The curriculum vitae will assess you against the selection criteria and give the panel a clear outline of your current knowledge and qualifications along with previous experiences.

3. Formal Interview

A formal interview will be conducted by the Selection Advisory Committee (SAC) with applicants who meet the required benchmark at the application stage.

Using the relevant selection criteria as a guide, you may be asked a range of questions to demonstrate your skills and abilities; this includes assessment against technical skills and knowledge for applicants applying for the Senior Lawyer role.

You can prepare for the interview by:

- reviewing your responses to the selection criteria, picking a few additional examples to use in the interview;
- ensuring that your examples meet the required [work level standards](#); and
- participating in a mock interview using the selection criteria to think of possible questions.

HOW TO APPLY

Applications are sought from suitably qualified, professional, enthusiastic and resilient Lawyers wishing to be considered for this opportunity, with a minimum of 1-5 years post admission experience for lawyers and 5+ years post admission experience for senior lawyers.

Applications must be submitted through the AFP recruitment system MyCareer, the link for this vacancy can be accessed via the [AFP Vacancies page](#).

Please ensure that you upload all required documents to your application.

Internal applicants - if you are going to be away during the advertising period and do not have access to AFPNet you will need to contact MyCareer@afp.gov.au to arrange to be granted external access.

Applications open on Thursday 24-31 March 2022 and close on Wednesday 6-13 April 2022 11:59pm.

FEEDBACK

Feedback for this process will be provided to applicants as follows:

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Application – unsuccessful applicants may request summarised written feedback regarding their application.

Formal Interview – successful and unsuccessful applicants will receive their individual assessment and also verbal feedback from a SAC member at the end of the recruitment process if requested.

FURTHER ENQUIRIES

If you require further information on the available role please contact the nominated email address' below. Please provide the Job Title in the subject line to ensure a response to your enquiry is not delayed.



Email: Personal information [@afp.gov.au](mailto:Personal information@afp.gov.au)



Phone: Personal information



Email: Personal information [@afp.gov.au](mailto:Personal information@afp.gov.au)



Phone: Personal information

OFFICIAL

Operation COVINA - Investigative review documents [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

From: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
To: erin [Personal information] [Personal information]
Cc: "Miller, Shelley" <[Personal information]@afp.gov.au>, "Drew, Helen" <[Personal information]@afp.gov.au>, "Hughes, Callum" <[Personal information]@afp.gov.au>, "Frizzell, Emma" <[Personal information]@afp.gov.au>, "Madders, Trent" <[Personal information]@afp.gov.au>, "Fleming, David" <[Personal information]@afp.gov.au>
Bcc: Prosecution disclosure _ Operation COVINA _ Request for further disclosure NSWDC _26718_ ACT DPP <{f51138}.legal@pocl.afp.gov.au>
Date: Mon, 20 Jun 2022 19:09:28 +1000
Attachments: DRAFT REDACTIONS - Investigation review conducted by Cmdr Smith dated 2 August 2021.pdf (1.96 MB); REDACTED - Identified discrepancies.pdf (120.38 kB); Review Doc.pdf (128.58 kB); DRAFT REDACTIONS - Higgins brief response by DCPO.pdf (118.69 kB); REDACTED - Briefs from Scott Moller and Marcus Boorman.pdf (9.61 MB)

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

Tel: Personal information

www.afp.gov.au<<http://www.afp.gov.au/>>

[Australian Federal Police]<<http://www.afp.gov.au/>>

[cid:image002.gif@01D7B9F4.DBAE9710]

RE: R v Lehrmann - Operation Covina - Disclosure request [DPP ref: 202113941] [SEC=OFFICIAL:Sensitive] [AFP-L.FID51138]

From: "Priestly, Erin" <[Personal information]@act.gov.au>
To: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
Cc: "Miller, Shelley" <[Personal information]@afp.gov.au>, "Drew, Helen" <[Personal information]@afp.gov.au>, "Hughes, Callum" <[Personal information]@afp.gov.au>, "Frizzell, Emma" <[Personal information]@afp.gov.au>, "Madders, Trent" <[Personal information]@afp.gov.au>, SVC_DPPCases <[Personal information]@act.gov.au>
Date: Fri, 17 Jun 2022 12:13:03 +1000

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Dear Stephanie

Thank you for your email.

I confirm we have contacted defence and advised we will not be in a position to disclose the report of iCloud and Google drive data or the PROMIS investigation files, unless they narrow the request.

So you are aware, I have also indicated we cannot provide the full unredacted Cellebrite report for privacy reasons and have asked them to outline which redacted material they are seeking.

Kind regards



Erin Priestly
 Senior Prosecutor
 Office of the Director of Public Prosecutions (ACT)
 GPO Box 595, Canberra ACT 2601 (DX 5725)
 T: [Personal information]
 T: [Personal information]
 E: [Personal information]
 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.

Please consider the environment before printing this e-mail

From: McKenzie, Stephanie <[Personal information]@afp.gov.au>
Sent: Thursday, 16 June 2022 6:21 PM
To: Priestly, Erin <[Personal information]@act.gov.au>
Cc: Miller, Shelley <[Personal information]@afp.gov.au>; Drew, Helen <[Personal information]@afp.gov.au>; Hughes, Callum <[Personal information]@afp.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>; Madders, Trent <[Personal information]@afp.gov.au>
Subject: R v Lehrmann - Operation Covina - Disclosure request [SEC=OFFICIAL:Sensitive] [AFP-L.FID51138]

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. [Learn why this is important](#)

OFFICIAL:Sensitive

Dear Erin

Thank you for your time this afternoon and please pass along our thanks to the Director and Skye.

I have attached a list of the items that defence have asked to be disclosed. Based on our conversation, we understand the DPP will resist the disclosure of the categories below on the basis that they are currently too broadly framed, with a view to the defence then narrowing the scope of any request for disclosure of items falling within these categories:

- Full report of Ms Higgins iCloud and Google drive cloud-based data
- All PROMIS 6831473 investigation files – INCLUDING the 'Investigative Review Documents' referred to in the Disclosure Statement.

We understand the DPP is content for the AFP to pause its review of documents responsive to these requested items until we hear further from you.

The AFP will continue to collate and review the other documents sought in the disclosure request, and provide these to the DPP as soon as possible. As mentioned, there are some items for which the AFP does not hold records.

Also, as mentioned, we will shortly provide you with copies of the two additional 'Investigative Review Documents' referred to in our teleconference for your assessment as to whether they may be disclosable.

We will also review the celebrite report and consider whether there is material, in addition to that redacted for victim privacy, that does not need to be disclosed and keep you informed of progress.

Kind regards
Stephanie

STEPHANIE MCKENZIE

LAWYER – AFP LEGAL
CHIEF LEGAL COUNSEL

Tel: Personal information

www.afp.gov.au



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20220616 - File note - Teleconference with ACT DPP - Operation Covina [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51136]

From: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
To: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
Date: Thu, 16 Jun 2022 17:58:19 +1000

OFFICIAL:Sensitive Legal privilege

Teleconference with ACT DPP – Operation Covina

16/6/2022 @ 4pm – 4:45pm

Attendees: Shelley Miller, Helen Drew, Stephanie McKenzie, Callum Hughes, Emma Frizzell, Trent Madders, Erin Priestly (DPP), Skye Jerome (DPP), Shane Drumgold (DPP).

- Helen advised that most of the material is being complied.
- There was discussion about the requested celebritie download.
 - o Callum confirmed there is a redacted and unredacted copy of the report.
 - o Shane advised that redactions need to be made pursuant to section 14F of the *Victims of Crime Act*.
 - o Shane advised that the unredacted report cannot be disclosed.
 - o There was discussion about the AFP preparing a new version of the report which redacts irrelevant material.
 - o Shane mentioned that it may be an issue in the case about whether the complainant “loves her job”.
- In relation to the request for a copy of the complainant’s Google drive and iCloud account:
 - o Emma advised that the Google drive cannot be produced because it is not a report per se and special software is required to access the material which cannot be provided to defence.
 - o The iCloud account report is more than 8,000 pages long. The content is linked in the report.
 - o Shane advised to push pause on this request and it is their job to narrow the scope of the request.
- In relation to the ‘investigative review documents’:
 - o Shane said that he had provided advice that two of the documents he had seen were privileged as they were created for the dominate purpose of obtaining legal advice.
 - § A four page report dated 8 June 2021 from Scott Moller to him which was a spreadsheet containing a summary of observations.
 - § The brief signed by Marcus Boorman.
 - o In relation to the tactical investigative review report
 - § Shane did not consider this disclosable.
 - o The AFP advised that it would send through a copy of the documents to ensure we were on the same page as to which documents may be privileged.
- In relation to the request for all PROMIS records and the investigative file:
 - o Shane said that request should be narrowed and the DPP will take responsibility for that.
- The AFP said it would send an email to confirm our discussion and next steps.

STEPHANIE MCKENZIE

LAWYER – AFP LEGAL
 CHIEF LEGAL COUNSEL

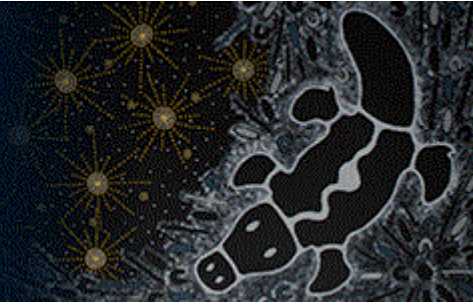
Tel: [Personal information]

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**RE: Operation COVINA - Investigative review documents - 202113941
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]**

From: "Priestly, Erin" <[Personal information]@act.gov.au>
To: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
Cc: "Miller, Shelley" <[Personal information]@afp.gov.au>, "Drew, Helen" <[Personal information]@afp.gov.au>, "Hughes, Callum" <[Personal information]@afp.gov.au>, "Frizzell, Emma" <[Personal information]@afp.gov.au>, "Madders, Trent" <[Personal information]@afp.gov.au>, "Fleming, David" <[Personal information]@afp.gov.au>, "Greig, Mitchell" <[Personal information]@act.gov.au>, SVC_DPPCases <[Personal information]@act.gov.au>
Date: Tue, 21 Jun 2022 10:45:40 +1000

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: [Personal information]

T:

E:

W:

www.dpp.act.gov.au

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Please consider the environment before printing this e-mail

From: McKenzie, Stephanie <[Personal information]@afp.gov.au>
Sent: Monday, 20 June 2022 7:09 PM
To: Priestly, Erin <[Personal information]@act.gov.au>
Cc: Miller, Shelley <[Personal information]@afp.gov.au>; Drew, Helen <[Personal information]@afp.gov.au>; Hughes, Callum <[Personal information]@afp.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>; Madders, Trent <[Personal information]@afp.gov.au>; Fleming, David <[Personal information]@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 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

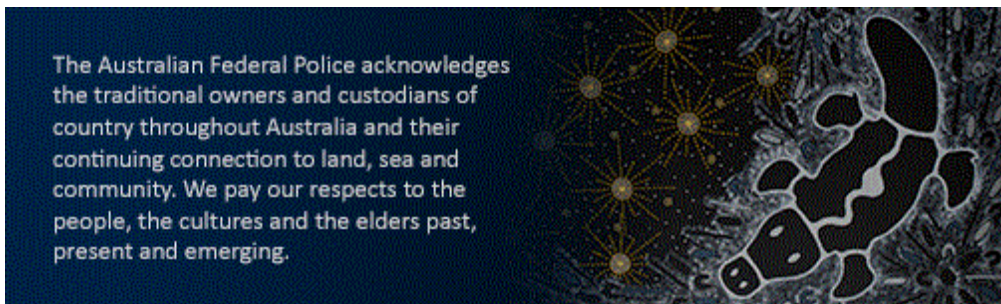
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RE: Operation COVINA - Proposed meeting to discuss disclosure requests [SEC=OFFICIAL] [AFP-L.FID51138]

From: "Priestly, Erin" <[Personal information]@act.gov.au>
To: "McKenzie, Stephanie" <[Personal information]@afp.gov.au>
Cc: "Miller, Shelley" <[Personal information]@afp.gov.au>, "Drew, Helen" <[Personal information]@afp.gov.au>, "Hughes, Callum" <[Personal information]@afp.gov.au>, "Frizzell, Emma" <[Personal information]@afp.gov.au>
Date: Fri, 08 Jul 2022 14:01:48 +1000

OFFICIAL

That is suitable – shall we say 3pm?

Kind regards



Erin Priestly
 Senior Prosecutor
 Office of the Director of Public Prosecutions (ACT)
 GPO Box 595 Canberra ACT 2601 (DX 5725)
 T: [Personal information]
 T: [Personal information]
 E: [Personal information]
 W: www.dpp.act.gov.au

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From: McKenzie, Stephanie <[Personal information]@afp.gov.au>
Sent: Friday, 8 July 2022 1:57 PM
To: Priestly, Erin <[Personal information]@act.gov.au>
Cc: Miller, Shelley <[Personal information]@afp.gov.au>; Drew, Helen <[Personal information]@afp.gov.au>; Hughes, Callum <[Personal information]@afp.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>
Subject: RE: Operation COVINA - Proposed meeting to discuss disclosure requests [SEC=OFFICIAL] [AFP-L.FID51138]

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OFFICIAL

Dear Erin

Thank you for your email. We are available in the afternoon of Tuesday, 19 July. Grateful if you can confirm whether this is suitable.

Kind regards
 Stephanie

STEPHANIE MCKENZIE
 LAWYER - OPERATIONS & COUNTER-TERRORISM
 CHIEF LEGAL COUNSEL
 Tel: [Personal information]
www.afp.gov.au



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From: Priestly, Erin <[Personal information]@act.gov.au>
Sent: Friday, 8 July 2022 12:12 PM
To: McKenzie, Stephanie <[Personal information]@afp.gov.au>
Cc: Miller, Shelley <[Personal information]@afp.gov.au>; Drew, Helen <[Personal information]@afp.gov.au>; Hughes, Callum <[Personal information]@afp.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>
Subject: RE: Operation COVINA - Proposed meeting to discuss disclosure requests [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

OFFICIAL

Dear Stephanie

Thank you for your email.

Unfortunately, the Director is not available next week. What is your availability like the following week of 18-22 July?

Kind regards



Erin Priestly
 Senior Prosecutor
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 GPO Box 595, Canberra ACT 2601 (DX 5725)
 T: [Personal information]
 T: [Personal information]
 E: [Personal information]
 W: www.dpp.act.gov.au

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From: McKenzie, Stephanie <[Personal information]@afp.gov.au>
Sent: Friday, 8 July 2022 12:12 PM
To: Priestly, Erin <[Personal information]@act.gov.au>
Cc: Miller, Shelley <[Personal information]@afp.gov.au>; Drew, Helen <[Personal information]@afp.gov.au>; Hughes, Callum <[Personal information]@afp.gov.au>; Frizzell, Emma <[Personal information]@afp.gov.au>
Subject: Operation COVINA - Proposed meeting to discuss disclosure requests [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51138]

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Dear Erin

I hope you're well. In relation to Operation Covina, we believe it would be useful to have a brief conversation with you to discuss the status of defence's disclosure requests.

If suitable, we are available for a teleconference next Wednesday. Grateful if you can also let us know your preferred time.

Thanks in advance.

Kind regards
Stephanie

STEPHANIE MCKENZIE

LAWYER - OPERATIONS & COUNTER-TERRORISM

CHIEF LEGAL COUNSEL

Tel: [REDACTED]

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Op COVINA - Teleconference with the DPP [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51137]

From: "McKenzie, Stephanie" </o=le/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=41e574f4e3f44aaa99088246cea1e3cb-mckenzie, stephanie">
To: "Miller, Shelley" [Personal information] @afp.gov.au>
Cc: "Drew, Helen" [Personal information] @afp.gov.au>
Date: Tue, 19 Jul 2022 13:54:32 +1000
Attachments: Status_Requests for Disclosure 220609.docx (25.41 kB)

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Hi Shelley

Please see the below points that Helen and I discussed raising with the DPP in our teleconference. Also, the **attached** document was sent by Emma Frizzell to the DPP during the last round of disclosure which outlines the current status of each disclosure request.

- Following our last meeting, the DPP was going to follow up with defence to try to narrow the requests for disclosure of the full iCloud and Google drives, and the request for all PROMIS records. Is there any update on this?
 - o In our last discussion, Emma advised that the Google drive cannot be produced because special software is required to read the data.

03.	Full report of Ms Higgins iCloud and Google drive cloud-based data	Unused material	DPP declined request of Defence. Do not progress unless otherwise advised by DPP as of 16 June.
18.	ALL PROMIS 6831473 investigation files – INCLUDING the 'Investigative Review Documents' referred to in the Disclosure Statement		DPP declined request of Defence. Do not progress unless otherwise advised by DPP as of 16 June.

- Following the last meeting, the DPP was going to review the unredacted Cellebrite report (item 1) and consider its disclosability. Is there any update on this?

01.	Cellebrite report of Ms Higgins mobile phone without redactions	Unused material	DPP hold material and to determine.
-----	---	-----------------	-------------------------------------

- In our previous meeting, we said we would review the Cellebrite report (item 2) to see if we could redact irrelevant information and consider whether portions of the report could be disclosed.

02.	Full cellebrite report of Ms Higgins mobile phone devices	Unused material	AFP Legal to review redactions.
-----	---	-----------------	---------------------------------

- However, we have since looked at the report and it is difficult without a thorough understanding of the issues in the case, or an awareness of the defence's theory of the case, what information in the Report may be disclosable.
 - o It's over 55,000 pages long.
 - o It doesn't appear to be the phone that Ms Higgin's had at the time of the alleged incident (need ACTP to confirm).

- o There are multiple messaging apps used.
- o There are conversations with:
 - § Sam Maiden prior to publication of the story.
 - § many journalists and politicians following the publication of the story
 - § her boyfriend about their relationship.
- o Prior to disclosure, there would need to be a further review of the report, noting that it includes messages between Ms Higgins and her legal representatives (presently unredacted) and what appear to be text message conversations with counsellors (presently unredacted).

· Discuss with the DPP the potential options for managing this request. Not sure what the AFP's preferred approach is.

- o One option would be for the DPP to engage further with defence to narrow the scope of their request to limit disclosure to messages exchanged with particular named people/categories of people.
 - § However, noting the voluminous nature of the document, we are concerned that we could miss something (noting the report is over 55,000 pages long and various messaging apps are used).
- o Another option would be for defence to subpoena the report.
 - § AFP could then object based on LFP.
 - § Defence would be required to articulate its purpose for seeking the report.
 - § Ms Higgins may also have an opportunity to be heard on the issue.

STEPHANIE MCKENZIE
LAWYER - OPERATIONS LEGAL
CHIEF LEGAL COUNSEL

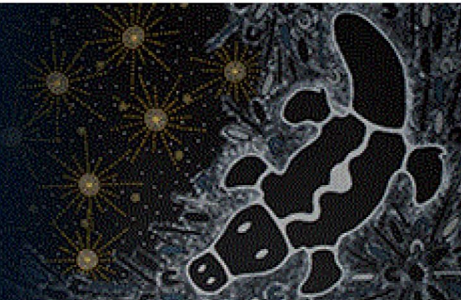
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20220719 - File note - T/C with ACT DPP [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID51136]

From: "McKenzie, Stephanie" </o=le/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=41e574f4e3f44aaa99088246cea1e3cb-mckenzie, stephanie">
To: "Stephanie McKenzie" (Personal information)
Date: Tue, 19 Jul 2022 15:32:57 +1000

**OFFICIAL:Sensitive
Legal privilege**

Telephone call with the ACT DPP

19 July 2022 @ 3pm (20 mins)

Attendees: Stephanie McKenzie, Shelley Miller, Callum Hughes, Shane Drumgold (ACT DPP), Erin Priestly (ACT DPP)

- Purpose of the discussion was to ensure we are on the same page regarding the status of disclosure requests in this matter.
- Shane confirmed they have asked defence to particularise the material they want in relation to the below requests as currently the requests are too broad:
 - o Cellebrite report (Shane referred to the Edwards case)
 - o Google and iCloud drives
 - o All PROMIS records.
- Shane also confirmed that they have advised defence that the Google drive cannot be produced because it is not in a readable form without software.
- Shane said they have not heard back from defence. They have gone quiet since the stay.
- Shane said he will make defence litigate it if they want full disclosure of the above items.
- Shane and Callum also discussed the request for documents from Matt (Personal information) and Greg (Personal information). Callum confirmed there will nil disclosable documents in response to this request.
- Shane confirmed his advice that the investigative review documents are subject to LPP as they form basis for a client seeking advice from a lawyer. He referred to the case of Vitrialis v Commonwealth.
- Shane confirmed they are not waiting on anything disclose-related from the AFP in this matter. Callum said that they are working on the other non-disclosure requests from the DPP in this matter.

STEPHANIE MCKENZIE
 LAWYER - OPERATIONS LEGAL
 CHIEF LEGAL COUNSEL
 Tel: (Personal information)

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