

This document has been redacted for Public Interest Immunity claims made by Victoria Police. These claims are not yet resolved.

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28 April 2020

By email: howard.rapke@rcmpi.vic.gov.au
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Dear Howard

Royal Commission into the Management of Police Informants

We refer to your email dated 27 April 2020 with the subject: [REDACTED] – Urgent'. We are instructed to respond as follows to the queries set out in that email.

Victoria Police acknowledges that this material has been identified at this very late stage and wishes to reassure the Royal Commission of its ongoing commitment to transparent engagement and to emphasise that this issue was not overlooked intentionally.

Given the urgent need to provide a response today, the following answers have been collated based on the best available information at the present time.

As noted in our email sent to you earlier today, there are some outstanding inquiries underway and we will provide any further relevant information to the Royal Commission as soon as we are able to.

1 Request made by a solicitor acting for Mr Cvetanovski

Discovery of the relevant materials

On 16 March 2020 there was a teleconference between the VGSO, OPP and Galbally Parker Lawyers (acting for Mr Cvetanovski) regarding Mr Cvetanovski's appeal. In the course of that teleconference, Galbally Parker requested telephone intercept material between [REDACTED] 2006 and [REDACTED] 2006 concerning [REDACTED] referred to in what Galbally Parker understood to be an 'AFP warrant' on a 'hand up brief'. This request was confirmed in an email from VGSO to Victoria Police on 17 March 2020.

Following receipt of that email, Victoria Police identified that intercept material concerning [REDACTED] had been obtained under a warrant held by the Special Projects Unit (SPU) at Victoria Police, and that this material was not obtained under an AFP warrant.

On 23 March 2020, Taskforce Landow was advised that the SPU held TI materials concerning [REDACTED] obtained between [REDACTED] 2006 and [REDACTED] 2006.

On 30 March 2020, SPU advised Taskforce Landow of the following information in relation to the warrant recorded as [REDACTED]:

- the warrant was approved for [REDACTED] days and activated between [REDACTED] and [REDACTED] 2006;

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- a total of 2159 calls were recorded; and
- the calls amounted to over 38 hours of recorded material.

Following confirmation of the existence of the material and preliminary investigation of the nature of the material, on 14 April 2020 VGSO wrote to Galbally Parker confirming that TI material concerning ██████████ had been located for the period from ██████████ to ██████████ 2006. The VGSO requested, if possible, that the request be narrowed. Galbally Parker responded the same day, advising the scope could not be narrowed.

Further enquiries of the SPU by Taskforce Landow between 15 and 19 April 2020 identified the following additional information about the TI material:

- there were approximately 90 calls or texts between ██████████ and a phone known to be used by Ms Gobbo;
- the name 'Nic', 'Nicola' or 'Nick' appeared in a further 43 call or SMS message summaries;
- there were three calls quarantined as subject to legal professional privilege (at that time, the practitioner was to be confirmed; as at the date of this correspondence, the practitioner is known to be Ms Gobbo).

The way in which searches were carried out, and this information obtained, is explained under the next sub-heading below.

On 20 April 2020 Taskforce Landow confirmed that the warrant and materials obtained under it may be relevant to the Royal Commission's Terms of Reference. During the week commencing 20 April 2020, Taskforce Landow arranged for SPU to provide access to these TI materials.

In the course of responding to the requests from VGSO and Galbally Parker, it became apparent that materials discovered by Taskforce Landow had not been previously identified as potentially relevant to the Royal Commission's Terms of Reference. Accordingly, the Royal Commission was advised of the existence of the materials on 26 April 2020. On 27 April 2020 the materials were provided to the Commission.

How the TI material is stored

The TI material, warrant and affidavits supporting the warrant are ██████████. There is limited capacity for searching the systems on which they are stored.

The following paragraphs explain how these applications were prepared and stored.

At the time the application for warrant ██████████ was made, warrant applications for TI materials were prepared by members of the SPU with specialist knowledge of the requirements for obtaining a TI warrant – these members were part of a unit called the Affidavit Preparation Section.

The affidavits supporting the application for a warrant were prepared on the basis of information provided to the SPU member by the relevant investigator who confirmed their contents; the SPU member does not have independent knowledge of the relevant events. In the course of preparing these affidavits, the SPU member may ██████████

When the affidavit is finalised, the hardcopy is stored in a filing system ██████████. If a warrant is granted following an application, the warrant is stored ██████████

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The [REDACTED] is also updated with the warrant number, and all documents associated with the application are added [REDACTED]. At this point [REDACTED] from any network drives they may have been saved to previously.

In contrast, TI materials obtained under warrant are held [REDACTED] on a specific system called [REDACTED] that is [REDACTED] and located in a secure, restricted area of Victoria Police. Only members of the SPU [REDACTED] who perform [REDACTED] roles supporting the telephone interceptions, and SPU members who are responsible for preparation of [REDACTED] (and their respective supervisors) have access to this database. Otherwise, Victoria Police members do not have access to [REDACTED] other than for a permitted purpose (ie, pursuant to a particular warrant). In 2006, investigators attended SPU offices to obtain access to calls they were authorised by the warrant to review. The [REDACTED] system is organised by [REDACTED] that is, to find a recording you must first locate the [REDACTED]

Incoming and outgoing telephone numbers are [REDACTED] as is the time of the call. As [REDACTED] listen to recordings, they are able to [REDACTED] of the call. Relevantly this activity is carried out as an [REDACTED] those listening to the call are [REDACTED] about the investigation. [REDACTED] save the summary [REDACTED] about the call. These [REDACTED] are stored in the part of [REDACTED] where the relevant TI material is saved.

There is limited inbuilt search function within [REDACTED] to search by reference to a particular person by name with accuracy. In order to identify, for example, whether TI materials recorded under warrant [REDACTED] refer to Ms Gobbo, SPU members have been required to run searches over the [REDACTED] by [REDACTED] to that specific warrant. This is not a reliable search function – for example, the results depend on whether the [REDACTED] the spelling used by the original [REDACTED] and consistency in the terms recorded between [REDACTED]

Victoria Police's approach to responding to NTPs 002 and 311

NTP 002 was issued on 23 January 2019 and outlines a broad ranging inquiry for documents that may be relevant to the Royal Commission's inquiry. Over 4,700 documents have been produced to the Commission under NTP 002. Victoria Police continued to disclose materials under NTP 002.

Item 7(e) and (f) of NTP 002 refers to recordings of telephone intercepts and recordings of listening devices 'with or concerning' 3838.

Victoria Police has accumulated TI records over the course of many hundreds of investigations over many years, obtained under many different warrants.

As a matter of practicality and based on a limited view of relevance at this early stage, when initially responding to NTP 002 category 7, Victoria Police considered whether there were any applications for TI's concerning Ms Gobbo.

In March 2019, Taskforce Landow alerted the SPU that TI affidavits which touch on or have the involvement of Ms Gobbo might be required to be produced.

During July 2019, Taskforce Landow discussed the need to review TI affidavits in order to understand the extent to which Ms Gobbo's informing was relevant to certain TI affidavits.

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The inquiry at this time was focussed on the information being put into the affidavit to obtain a TI. The need to also query the existence of any materials obtained as a result of the TI warrants and supporting affidavits was not identified at this time.

NTP 311 was issued on 13 August 2019. NTP 311 specifically refers to copies of all warrants involving (as suspects, persons of interest, or accused, or any other capacity) eleven individuals and affidavits prepared or relied on in support of these warrant applications.

As a result of the discussions in July, a SPU member had commenced a review (in hard copy) of the holdings containing affidavits and warrants by reference to names and operations which might have involved Ms Gobbo. The hardcopy affidavits and warrants relevant to the TOR were then scanned and produced to the Royal Commission by Victoria Police in accordance with NTP 311. Almost 1,000 documents have been produced under NTP 311.

We acknowledge that responding to NTP 311 provided an opportunity to revisit NTP 002 and, in particular, category 7. However, as noted above, the task of identifying TI affidavits and warrants focussed on the inputs provided into the affidavits, rather than the materials obtained as a result of the affidavits. As a result, regrettably, Victoria Police did not consider the 'gap' in its response to NTP 002 items 7(e) and (f) and the materials produced under NTP 311 at this time.

2 Explanation as to location and production

We refer to our explanation about the production of materials under NTP 002 and NTP 311 above. We are carrying out a further review of the existing witness evidence and will provide the Commission with an update arising out of those investigations.

In a general sense, we understand that TI material obtained in 2006 under warrant [REDACTED] was considered not relevant by investigators when that information was reviewed by them in the course of their investigations.

We are seeking further instructions regarding these matters and expect we will ultimately provide supplementary statements from relevant investigators explaining the approach they took to the review of TI materials at that time. We will provide an update in respect of this work by 1 May 2020.

We note that several current and former Victoria Police members were asked about TI materials in the course of giving evidence before the Royal Commission. One example is Dale Flynn, whose evidence was to the effect that TI's would have been in place over [REDACTED] phone. Mr Flynn's evidence was that any TI material capturing discussions between [REDACTED] and Ms Gobbo was unlikely to have been produced to the defence in a prosecution at the time, as it would not have been considered relevant. That answer approached the question with the knowledge and understanding that Mr Flynn had during 2006. Mr Flynn accepted that (knowing what he knows now) that information might now be considered relevant. See T6757.45 – T6759.15.

3 Warrant

The warrant (produced on 11 April 2019) is available at VPL.0216.0003.0729.

The affidavit (produced on 15 August 2019) filed in support of the application for warrant [REDACTED] is available at VPL.2100.0008.0001.

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Galbally Parker's request in the context of her client's appeal was framed by reference to warrant [REDACTED]. In the course of investigating this request and preparing materials to be provided to the Royal Commission, Victoria Police has become aware of warrant [REDACTED] which also concerns [REDACTED]. From time to time, persons the subject of a TI will obtain a new phone and new warrants are issued accordingly. TI materials were obtained under this warrant [REDACTED] for the period [REDACTED] 2006. This overlaps with the period for warrant [REDACTED].

Warrant [REDACTED] (produced on 1 November 2019) is available at VPL.2100.0009.0018 and the affidavit in support of that warrant (produced on 15 August 2019) is available at VPL.2100.0008.0034.

Several other affidavits in support of warrants were filed in this period and are mentioned here as they were obtained on behalf of Operation Posse and were based on similar (though not the same) intelligence. Each was produced on 15 or 16 August 2019 and they are available at VPL.2100.0001.0001, VPL.2100.0003.0055, VPL.2100.0006.0022, VPL.2100.0008.0034 and VPL.2100.0004.0001.

Victoria Police is reviewing its warrant affidavit holdings and we will provide an update to the Commission by the end of this week to confirm whether any further affidavits have been located.

4 Other warrants

Victoria Police is investigating this request by reference to warrants obtained which concern the individuals named in NTP 311 together with those individuals specifically identified in your email, although it would be helpful if the Royal Commission could indicate why further names have been included in this request. We will provide an update in relation to these inquiries at the end of this week.

The Commission is requested to provide further detail if it seeks TI material produced under a warrant issued in respect of any other individuals.

5 Officers aware of the warrant(s)

Broadly speaking, Victoria Police's practice in respect of TI materials obtained in 2006 was:

- SPU [REDACTED] listened to TI materials [REDACTED] a call was intercepted. As explained above at item 1, the SPU [REDACTED] performed an [REDACTED] function and [REDACTED] summary of the call;
- If the SPU [REDACTED] considered that the TI materials contained evidence of an offence, based on [REDACTED] they would 'mark' it as such.
- SPU [REDACTED] 'quarantined' any material they believed to be the subject of legal professional privilege;
- SPU provided TI materials to the relevant investigator, who attended the SPU premises to listen to the recordings;
- Investigators assessed the evidentiary value of that material in accordance with their general disclosure obligations;
- If the material was deemed relevant by the investigator, it was included in the brief of evidence;

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- In the unlikely circumstances that TI material included in a brief contained information subject to a PII claim, any PII claims that Victoria Police might wish to make would be made at this point.

This explanation is intended to be a general overview only and will be supplemented by further explanation as contemplated in the response to item 2 above.

6 Explanation regarding warrant

The name of the officer who applied for the warrant in question

Detective Senior Sergeant Russell Scott Fletcher, on behalf of Dale Flynn.

DSS Fletcher (at the time the affidavits were made in respect of the warrant) was a Senior Sergeant in the SPU. As noted above, the SPU were responsible as subject-matter experts for making applications for warrants on behalf of investigators. The relevant Senior Sergeant would not have had any investigative knowledge and would complete the necessary affidavit on the basis of material provided by the relevant investigator.

Who within Victoria Police knew about, or was likely to have known about the warrant and the material produced as a result of the warrant

At least:

- DSS Fletcher;
- Dale Flynn;
- Jim O'Brien;
- Paul Rowe;
- Tim Johns.

Who had, or was likely to have had, access to that material

At least:

- those members identified immediately above;
- SPU [REDACTED] who listened to the TI material, noting as described above these individuals carried out [REDACTED] listening to TI materials for [REDACTED] TI warrants [REDACTED]

As to the other questions raised, we refer to our explanation set out under items 2 and 5 above, noting that we are carrying out further work to confirm these matters.

7 Disclosure

We refer to our explanation set out under items 2 and 5 above, noting that we are carrying out further work to confirm these matters.

If you have any queries, please contact us.

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Yours faithfully

Corrs Chambers Westgarth

A handwritten signature in blue ink, appearing to read 'Abigail Gill'.

Abigail Gill

Partner