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VICTORIA POLICE

38

FILE TITLE

Neil Comrie - Engagement Letter

1 Folio No.	2 Referred to	3 Date	4 Clearing Officer's Initials	1 Folio No.	2 Referred to	3 Date	4 Clearing Officer's Initials

FILE COVER INSTRUCTIONS FOR ACTION OFFICERS

(1) FOLIO NUMBERS: Each subject paper attached to a file is to be given a consecutive number by the attaching officer.

(3) BRING UP MARKINGS: When action on a file is required at a later date, the officer will initial Column (4) and, on the next

FILE

COPY

Ron
Please find attached the Commissioner's response regarding human source management. I will be proposing the recommendation.
Ken
6/8/12

Mr Ron Bonighton
Acting Director, Police Integrity
Office of Police Integrity
[redacted]
Melbourne Victoria 3000

Dear Mr Bonighton

Further to our discussion on Friday, 20 July 2012 please find attached documents for your information and consideration.

Should you require any additional information or wish to discuss this matter in further detail, please do not hesitate to contact acting Deputy Commissioner Jeff Pope on [redacted]

Yours sincerely

Received from Commander Bolt Clegg on 4/1/15 for filing.

Findlay McRae
BA LLB
Director of Legal Services

Ken D. Lay APM
Chief Commissioner

25 / 07 / 2012

Human Source 3838 Case Review – Issues of Significance Beyond Scope of Review Terms of Reference

Neil Comrie has been engaged by Victoria Police as an external consultant to conduct an independent case review of aspects of the human source 3838 (3838) matter. This review is predominately human source systems and process focussed. It has entailed consideration of a variety of records including electronic records compiled by the Source Development Unit (as handlers and controllers of 3838) and other hard-copy records from the Petra Task Force Steering Group (who were to contemplate the use of 3838 as a prosecution witness for the Paul Dale matter).

The terms of reference for this 3838 review also require regard to be given to the particular professional standing of 3838 (at that time a criminal barrister).

In the course of reviewing available material certain records have been identified that raise issues of concern that are outside of the terms of reference for this review. These concerns relate to the manner in which 3838 was utilised as a human source and the resultant impacts of this. Full consideration of such matters would require substantial further investigation and consultation with various other parties well beyond the scope of this systems and process focussed review.

On 15 June 2012, the Comrie Review was provided with two folders of material related to the Petra Task Force Steering Group. This Steering Group consisted of then Deputy Commissioner Simon Overland, then Assistant Commissioner Crime Dannye Moloney, then Assistant Commissioner ESD Luke Cornelius and with oversight being provided by then Deputy Director OPI Graham Ashton.

Petra Steering Group records reflect that on 5/1/09 Assistant Commissioner Moloney delivered to Deputy Commissioner Overland (as chair for the Steering Group) a file that originated from the Covert Service Division. The apparent purpose of this file was to alert the Petra Steering Group to considerations thought relevant when contemplating if 3838 should transition from a human source to become a prosecution witness against Paul Dale.

In an Issues Cover Sheet within this file, Superintendent Biggin, the then head of the Covert Support Division, advised that there were a number of organisational risks to Victoria Police should it utilise 3838 as a prosecution witness, and that the Source Development Unit were prepared to expand on these to Petra Task Force Management. Also attached to this file was a briefing note addressed to Superintendent Biggin from Black-O Black-O from the Source Development Unit. This briefing note takes the form of a SWOT analysis (strengths / weaknesses / opportunities / threats) should 3838 become a Crown witness. Notable comments within this paper are as follows:

- (weakness) – Possible OPI / Government review into legal / ethical implications
- (threat) – Judicial review of police actions in tasking and deploying one of their own.
- (threat) – Public Interest immunity – HS well connected in the Victorian legal fraternity.

- (threat) – OPI Review – Serving barrister assisting Police; consideration of unsafe verdicts and possible appeals; Prosecutions current (Mokbel) and future?

There are no minutes attached to this file to indicate who was present at this Steering Group meeting or to confirm if in fact the file was circulated, considered or discussed at all.

Within the electronic SDU records for 3838 there are other notable comments expressing concern should 3838 become a Crown witness. In an SDU Informer Contact Report (048 of 5/12/08) the following comments are provided:

- Risk to organisation if long term source role is exposed – perception of source passing on privileged information and police using same, and
- Jeopardise future prosecutions if HS (human source) role is divulged (mostly Mokbel and spin offs)
- Leave previous convictions open to claims of being unsafe because of HS involvement / privilege.

In reviewing the full electronic Interpose file for 3838 there are numerous examples of 3838 providing information to police handlers about 3838's criminal clients. Such entries, taken at face value, suggest that 3838 has disregarded legal professional privilege (LPP). Furthermore, in some instances, such conduct may have potentially compromised rights to a fair trial for those concerned. 3838 may suggest that these people were not clients at the time of this activity.

As there is no recorded active discouragement on file from the police handlers for 3838 to desist with furnishing information on such matters, the handlers remain vulnerable to perceptions that they may have actually been inducing or encouraging such conduct. These concerns are heightened in instances where handlers have passed on such information to other police case managers, presumably so that they may make use of it.

Some examples include:

- 3838 advising handlers about who will provide evidence in a forthcoming bail application that 3838 is to conduct and what the nature of this evidence will be.
- 3838 discovers a technical defence open to a client for charges faced in a criminal brief then advises handlers of this issue.
- 3838 engages in discussions with handlers about the conduct of an adjournment process with an objective of securing bail seemingly to enable other offences to continue, thereby providing for the arrests of others.
- 3838 appears as counsel in a bail application for a criminal that had, to some extent, been the subject of 3838's informing.
- 3838 details to handlers shortcomings in criminal briefs relating to clients of 3838.
- 3838 provides advice to police when queried about the best approach for police to adopt when they interview one of 3838's clients.

- 3838 alerts handlers as to how a court procedure is to be challenged by way of legal tactics.

- 3838 advises handlers about deficiencies identified in a criminal brief against one of 3838's clients. Handlers then relay such information to management for the area responsible for submission of the brief.

- In meetings with handlers, 3838 is shown transcripts of interviews with certain criminals and 3838 then provides an assessment about the truthfulness of the responses that have been provided by the criminals.

- 3838 engages with a fugitive abroad who is facing and is to challenge extradition. 3838 learns of defence tactics that are likely to be utilised. 3838 then relays this information to police handlers. The handlers, in-turn relay such matters to the police informant for the matter.

- 3838 suggesting to police that a search warrant be taken out on 3838's chambers to boost the credibility of 3838. Such a warrant is later executed.

Consideration of the above examples, in company with the transition threats reported to the Petra Steering Group, could at face value suggest that this source and police involved have acted in a manner which has caused to undermine the justice system. Assessment of all necessary records and consultation with the DPP may discount this. As highlighted, such works are beyond the scope of the Comrie Review.

There is one other particular issue within the 3838 file that warrants attention. This concerns 3838 advising that certain senior police had accepted hospitality from a media outlet (a corporate box at the MCG football for the Age newspaper) which 3838 had also accepted an invitation to attend. 3838 alleges that on this occasion 3838 was spoken to by a senior officer, then at ESD, about a particular internal police investigation. 3838 alleges that this questioning took place in the presence of a particular crime reporter from the Age newspaper. From my review of the entire 3838 file it would appear that this issue, which dates back to 2006, was not recognised as being of any concern and therefore was not the subject of any referral or investigation.

Substantial records have been compiled in the course of the Comrie Review which provide further detail in regard to the matters highlighted above. Such records can be made available as may be required. The point of contact for this is Superintendent Steve Gleeson on [redacted]