



VICTORIA POLICE

**Victoria Police
Legal Services Department**

Level 8, 637 Flinders Street
Melbourne 3005
Victoria, Australia

**Assistant Commissioner Jeff Pope
Intelligence and Covert Support Department**

Dear Assistant Commissioner Pope,

**Re: Human Source 3838 Case Review – Notification of Recognition of Issues of
Significance Outside of Review Terms of Reference**

As you are aware, I have been tasked to assist Neil Comrie, who 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 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 I have identified certain records that raise issues of concern that are outside of the terms of reference for this review, but worthy of your further consideration. 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, I was provided with two folders of material related to the Petra Task Force Steering Group. This 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 organisation 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 this particular review.

There is one other particular issue within the 3838 file I wish to draw to your 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 she 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.

I am conscious of my Police Regulation Act obligations to report apparent misconduct and accordingly provide this report to you for appropriate attention.

In the course of my assisting with this 3838 review I have compiled substantial records which provide further detail in regard to the matters highlighted above and can make these available as may be required.

If you have any queries, or should you require a more comprehensive briefing concerning these matters then please do not hesitate to contact me.

Yours sincerely,



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