

# MinterEllison

28 June 2019

## BY EMAIL

Mr Howard Rapke  
 Holding Redlich  
 Solicitors assisting the Royal Commission into the Management of Police Informants  
 [REDACTED]

Dear Howard

### Notice to produce NTP-80

We refer to our email correspondence with Kylie Hall on 29 and 30 May 2019 and to your email of 25 June 2019 regarding the production of material from electronic devices collected from Ms Gobbo's residence.

We refer also to recent discussions between our respective counsel in which it was suggested that the scope of the notice to produce (NTP-80) may need to be expanded to capture further material relevant to the Commission's terms of reference.

We write to provide an update on our forensic extraction process and to set out our proposal in relation to the production of further documents that may be relevant to the Commission's inquiry.

#### 1. Status of forensic extraction process

As the Commission is aware, we have engaged forensic consultants to extract data from the devices. We are informed that the extraction process has been significantly complicated by the age of the devices and, in some instances, by the requirement for a passcode.

The current status of the extraction process in respect of each phone is set out in the table below.

Phone	Status	Comment
Pink Motorola	Our forensic consultants were unable to extract any data from this phone. The phone could not be turned on and it did not contain any SIM card or memory card.	
Grey Motorola	Our forensic consultants were unable to extract any data from this phone. The phone could not be turned on and it did not contain any SIM card or memory card.	
Red and grey Nokia	Our forensic consultants extracted some data from this phone, including a short contact list, call log and text messages.	This phone contains some material that is responsive to the notice to produce or may otherwise be relevant to the Commission's terms of reference. We set out below our proposal for producing these messages.
Purple and grey Nokia	Our forensic consultants extracted very limited data from this phone. No contact list, call log, text	We are instructed that our client's [REDACTED] brought this phone home from [REDACTED] and used it [REDACTED]



	messages, images or videos were extracted.	The phone was never used by our client.  None of the data extracted from the phone is meaningful or responsive to the notice to produce.
iPhone 3G	Our forensic consultants have had difficulty extracting data from this phone due to its age. The text messages could not be extracted but have been reviewed by us on the device.  Our forensic consultants were able to locate a backup of this phone on our client's laptop.	This phone contains some material that is responsive to the notice to produce or may otherwise be relevant to the Commission's terms of reference. We set out below our proposal for producing these messages.
iPhone 4S	Our forensic consultants were unable to extract any data from this phone because it was locked with a passcode. We are informed that the contents of the phone may be wiped if attempts are made to extract data without the passcode.  Our forensic consultants were able to locate a backup of this phone on our client's laptop.	Our client has provided us with various possible passcodes for this phone, none of which appear to be correct. We have sought confirmation that there are no other possible passcodes.  The backup of this phone contains some material that is responsive to the notice to produce or may otherwise be relevant to the Commission's terms of reference. We set out below our proposal for producing this material.
iPhone 5	This phone was not provided to our forensic consultants.	We are instructed that there was a technical fault with this phone and, as a result, it was never used by our client. We note that the screen of the phone is covered in protective plastic.  We did not provide this phone to our forensic consultants as, on our instructions, it was never used and will not contain any meaningful data.
iPhone 6S	Our forensic consultants were unable to extract any data from this phone because it was locked with a passcode. We are informed that the contents of the phone may be wiped if attempts are made to extract data without the passcode.	We are instructed that this phone does not belong to our client. We have nevertheless sought instructions on whether there is any way we can obtain the passcode to enable us to extract data from this phone.

The current status of the extraction process in respect of each non-telephony electronic device is set out in the table below.

Device	Status	Comment
Laptop	Our forensic consultants have extracted documents from the laptop which have been reviewed by us.	Responsive documents extracted from this device have been produced to the Commission.

Digital camera	We have reviewed the photographs on this camera.	This camera contains photographs taken at a party on ██████████ 2006. This material may be relevant to the Commission's terms of reference.
Seagate 10.2GB hard drive	Our forensic consultants have extracted documents from the hard drive which have been reviewed by us.	Responsive documents extracted from this device were produced to the Commission in tranche 6.
Blue CD	We have reviewed the data on this CD.	This CD contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Blue CD	We have reviewed the data on this CD.	This CD contains photographs from a party on ██████████ 2006. This material may be relevant to the Commission's terms of reference.
White CD labelled 'Nic's Holes'	We have reviewed the data on this CD.	This CD contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Silver CD	We are reviewing the data on this CD.	We will produce any material on this CD that is responsive to the notice to produce.
Gold CD	This is a blank CD.	
Pink CDs (10)	These are blank CDs.	
Blue USB labelled 'Kidding Around'	We have reviewed the data on this USB.	This USB contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Blue EMTEC USB	We have reviewed the data on this USB.	This USB contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Red and black Strontium USB	We have reviewed the data on this USB.	This USB contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Red and black SanDisk USB	We have reviewed the data on this USB.	This USB contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Black SanDisk USB	This USB does not work.	
White and black USB	This is a blank USB.	
Black and red USB	We are reviewing the data on this USB.	This USB contains personal material, none of which is responsive to the notice to produce or relevant to the Commission's terms of reference.
Green iPod	No files were identified on this device except for music files.	

## 2. Response to Notice to Produce NP-80

We note that, in Kylie Hall's email of 30 May 2019, it was stated that it is the Commission's view that what it considers relevant based on its current lines of inquiry may not be readily apparent to those undertaking a review by way of a standard keyword search or assessment for relevance.

We acknowledge that we, and our client, are not privy to all the matters which the Commission regards as relevant to its inquiry. For this reason, we have not attempted to conduct a general relevance review of the material which has been collected from Ms Gobbo's residence. Rather, our review process has involved assessing all hard copy and electronic materials by reference to the terms of the notice to produce served on our client.

We would also emphasise that our client's obligation to produce documents to the Commission arises from, and is limited by, the notice to produce. Although our client is keen to assist the Commission, there are important protections available under the *Inquiries Act 2014* (Vic) in respect of the compulsory disclosure of information and documents. Many of these protections are not available where information and documents are disclosed voluntarily.

For this reason, we are not in a position to voluntarily produce documents that do not fall within the terms of the notice to produce. To ensure our client is afforded protections available under the *Inquiries Act*, it is necessary that the Commission serve on our client a second notice to produce which identifies the further material which it seeks.

### *3. Proposed second notice to produce*

We are keen to assist the Commission in formulating a second notice to produce which will capture further material that is likely to be relevant to the Commission's terms of reference and its current lines of inquiry.

We propose that a second notice to produce be served on our client requiring production of the following documents:

1. From 1 January 1995, correspondence between our client and the Australian Federal Police or any personnel of the Australian Federal Police, and file notes recording communications between our client and the Australian Federal Police or any personnel of the Australian Federal Police.
2. From 1 January 1995, call log records and text messages extracted from mobile phone devices recording communications between:
  - (a) our client and the contacts listed in Annexure A to this letter; or
  - (b) our client and persons using unknown telephone numbers (that is, telephone numbers not assigned to any particular contact in the mobile phone device).
3. From 1 January 1995, correspondence and file notes provided to our client in respect of persons who were the subject of information provided by our client to Victoria Police or any personnel of Victoria Police (that is, correspondence and file notes not written by our client).
4. Documents relating to a burglary carried out at 23 Dublin Street, Oakleigh East in September 2003.
5. Documents relating to investigations, charges or proceedings against Paul Dale.
6. Documents relating to an event held at Wheat restaurant on Saturday, [REDACTED] 2006.
7. Documents relating to an inquiry conducted by the Legal Services Commissioner in 2006 in response to a complaint made by or on behalf of Carl Williams.

In the event that the Commission serves on our client a second notice to produce in the terms proposed above, it will be necessary for us to re-review a number of documents which are not responsive to the current notice to produce. We anticipate this process will take some time. We will be better able to assess how much time when we are some way into the process.

We note that we have conducted a preliminary review of some of the material which would be responsive to category 2 of the proposed second notice to produce. Some of that material is personal and is not, on any view, relevant to the Commission's terms of reference.

We intend to apply redactions over any material which falls within the terms of the proposed second notice to produce but which is personal in nature and clearly irrelevant to this inquiry. Please let us know if the Commission has any concerns about this approach.

*4. Request for clarification on category 3 of NTP-80*

Category 3 of the current notice to produce sets out a non-exhaustive list of people who were the subject of information provided by our client to Victoria Police. Category 3 of the above proposed second notice to produce also refers to those people, albeit in general terms.

We would be grateful if the Commission could indicate whether it is aware of any other person or people not named in the list about whom our client provided information. If the Commission has identified any such person, we will produce documents relating to that person in accordance with the notice to produce.

Please let us have your views on the proposed second notice to produce. Should you have any queries, please do not hesitate to contact us.

Yours faithfully

**MinterEllison**



**Richard Murphy**  
**Partner**

OUR REF: 1239986







