

Confidential**Email**

29 July 2019

Mr Howard Rapke
Solicitors Assisting the Royal Commission
Royal Commission into the Management of Police Informants

PII

Our ref 13615/19438/80203807

Dear Mr Rapke

**Victorian Royal Commission into the Management of Police Informants:
Notices to Produce 211 and 276**

We refer to the above matter, to Notice to Produce 211 (**NP211**) and 276 (**NP276**) received by the Australian Federal Police (**AFP**) on 10 May 2019 and 28 June 2019 respectively, and to our telephone conversation on 3 July 2019.

As we have advised in previous correspondence, the AFP is willing to consider the voluntary production of documents to the Royal Commission, subject to Commonwealth statutory secrecy provisions and public interest immunity (**PII**), and to the relevance of the documents sought to the Terms of Reference.

1. We appreciate the reduction in scope of NP211 to the period between 1 January 2007 and 31 December 2008, and the indication that the Royal Commission does not seek evidence obtained through the use of surveillance devices or telecommunications intercepts but instead seeks, in essence, correspondence between the AFP and Victoria Police (**VicPol**), the context and circumstances in which warrants were obtained and the material filed which led to warrants being issued.
2. We note that NP276 seeks copies of 3 specific warrants and the affidavits relied upon to obtain those warrants. NP276 therefore seeks a subset of documents that may otherwise fall within the scope of NP211.
3. As foreshadowed in our call, the AFP is willing to provide copies of the warrants specifically listed in NP276 to the Royal Commission and to that end, we **enclose** a USB containing copies of 7 warrants. We note that contrary to your letter dated 19 July 2019, the AFP only agreed to provide the warrants specifically listed in NP276, not all warrants obtained throughout the course of Operations Inca and Bootham-Moko.
4. However, the affidavits in support of those warrants (and other warrants obtained by the AFP with respect to Operations Bootham-Moko and Inca) contain highly sensitive information and carry a security classification of "Highly Protected". Such affidavits are not ordinarily disclosed outside the AFP, and are generally only read by the AAT member considering the issue of the warrant and then immediately returned. Further, the AFP will where necessary commence legal proceedings to protect such affidavits from disclosure outside the AFP.
5. The AFP remains concerned that the documents sought by NP211 and NP276 are:
 - (a) relevant to Rob Karam's present application for leave to appeal 3 convictions arising out of Operation Inca in the Court of Appeal;
 - (b) relevant to Jan Visser's application for leave to appeal convictions arising out of Operation Bootham-Moko; and

- (c) subject to substantive PII claims by the AFP and, in part, to Commonwealth statutory secrecy provisions.
6. The affidavits filed in support of the applications for the warrants sought in NP276:
- (a) contain highly sensitive information that is wholly unrelated to Victoria Police and Nicola Gobbo, and is subject to PII claims by the AFP;
- (b) contain information subject to Commonwealth statutory secrecy provisions; and
- (c) are not based, so far as the AFP can ascertain, on information provided either directly by Gobbo or obtained as a result of information provided by Gobbo, other than the fact of the Australian Customs Service's (**Customs**) intercept of a shipment on or around 28 June 2007 which the AFP now understands is alleged to have occurred at least in part due to the provision of a bill of lading by Gobbo to VicPol. In fact, other than minor incidental information (such as checking an address on the VicPol LEAP database), those affidavits do not rely on information from VicPol. We do not consider that any useful new information would be obtained by the Royal Commission if it were to receive copies of the affidavits.
7. The AFP therefore declines to provide copies of the affidavits to the Royal Commission. However, the AFP would be willing to consider responding to specific questions about the affidavits and relevant warrants, to the extent doing so would not traverse information subject to PII claims by the AFP and/or Commonwealth statutory secrecy provisions, and to the extent doing so would not adversely impact any current Court of Appeal proceedings.
8. To that end, it may again be useful to set out (this time in more detail) relevant background to Operations Bootham-Moko and Inca:
- (a) In 2007, the AFP commenced a number of drug-related investigations, being:
- (i) Operation Bootham-Moko, in July 2007;
- (ii) Operation Inca, on or about 31 July 2007; and
- (iii) Operation Cardinia, in December 2007.
- (b) Operations Bootham and Moko were initially separate investigations commenced in March and June 2007 respectively. The investigations were combined into Operation Bootham-Moko in July 2007, which was an investigation of the importation of a consignment of tomato tins (but not the conduct of the targets after the importation).
- (c) Operation Inca was commenced as a joint investigation with VicPol, the Australian Crime Commission (**ACC**), Customs, and the Australian Taxation Office (**ATO**). It was an investigation into the operations of a major organised crime syndicate, being the targets of Operation Bootham-Moko, but in relation to their conduct after the importation. Operation Inca was not a collective investigation of all targets across all agencies, accordingly:
- (i) the AFP's main targets were Pasquale Barbaro, Saverio Zirilli and another individual against whom charges were never laid. Up until 4 October 2007, the AFP maintained telecommunications interception in relation to Barbaro and Zirilli; and

- (ii) VicPol and the ACCs' main targets were Carmelo Falanga, John Higgs and Rob Karam. Up until 4 October 2007, the ACC maintained telecommunications interception in relation to all three targets. VicPol maintained listening device surveillance in relation to Higgs.
 - (d) The agencies involved did not share an office or computer system and collected and recorded data in individual databases.
 - (e) On 4 October 2007, due to resourcing issues and operational priorities, VicPol and the ACC ceased their involvement in Operation Inca. Up until that time, the operation had been in "work-up" phase to obtain an understanding of the syndicate members through use of surveillance, as set out above.
 - (f) Following the withdrawal of VicPol and the ACC, Operation Inca became an AFP-led investigation with the support of Customs and the ATO. Telecommunications interception and listening device surveillance of the targets was commenced by the AFP.
9. As a result, other than standard information queries (such as searches of the VicPol LEAP database), the AFP anticipates there to be little information received from VicPol in relation to these Operations.
10. In an attempt to assist the Royal Commission, the AFP sets out below a summary of information taken from the confidential affidavit of Federal Agent ██████████ filed in the Karam Court of Appeal proceedings. While the affidavit relates only to the Karam proceedings, the AFP is of the view that the affidavit is a useful indicator of both the scope of work that would be required to respond to the terms of NP 211, and the minimal utility this would serve.
11. Relevantly, the affidavit of FA ██████████ establishes the following:
- (a) FA ██████████ undertook a variety of searches regarding Karam, being:
 - (i) searches in AFP records for any information about Karam which was provided by VicPol to the AFP between 31 July 2007 and 31 December 2014 (**Period of Interest**). The start of that period was selected because the entries in the PROMIS main case for Operation Inca commenced on that date;
 - (ii) searches for documents provided by the AFP to VicPol in the Period of Interest which referred to Karam; and
 - (iii) searches for records created by the AFP which referred to information referring to Karam provided orally by VicPol to the AFP during the Period of Interest.
 - (b) A total of 27 records were identified by FA ██████████ from the results of those searches as material relating to Karam or a person FA ██████████ believed to be Karam. Details of 25 records were provided to VicPol so that it could be determined whether any of the information in those records was provided by Gobbo.
 - (c) VicPol identified one item of information as not being able to be excluded as being derived from information provided by Gobbo. The item of information is that one of Karam's nicknames was "Rockstar".

- (d) The other 2 records were photographic images of Karam apparently created by a VicPol member or members on 16 December 2011.
- (e) FA [REDACTED] was the informant in relation to the relevant convictions. FA [REDACTED] deposed in his affidavit to the fact that knowledge of the nickname "Rockstar", and the two photographic images, had no impact or effect on Operation Inca and were not used in the investigation or prosecution phase of Operation Inca in any way.
12. FA [REDACTED] also, in his affidavit, deposed to the following which may be of use to the Royal Commission:
- (a) The AFP prepared the combined Brief of Evidence for Operations Inca, Bootham-Moko and Cardinia;
- (b) It was served in 2009 with additional material served up until 2014;
- (c) It contained approximately 3,800 witness statements, of which 184 were VicPol witness statements;
- (d) 176 of the 184 VicPol witness statements related to physical surveillance conducted between May and September 2007 in Operations Inca and Bootham-Moko;
- (e) The 8 remaining statements comprised:
- (i) a statement regarding an item seized by VicPol during a search of a hotel room in September 2007 occupied by Barbaro and others;
- (ii) 4 statements relating to VicPol's interception and arrest of Operation Inca offender Amren Joskun for State-based money laundering offences. Joskun was arrested at the AFP's request in February 2008;
- (iii) a statement regarding the arrest of Jan Visser in May 2008 on a New South Wales arrest warrant by a VicPol member who had been seconded to the AFP; and
- (iv) 2 statements regarding the VicPol interception and arrest in June 2008 of Operation Inca offender Antonia Sergi for State offences related to drug trafficking.
13. The AFP is conducting the same process in relation to the period of time from 1 January 2005 to the Period of Interest. Earlier this year the AFP provided further documents to VicPol and is awaiting a response on whether any information in those documents was provided by Gobbo. The AFP is willing to advise the Royal Commission about the outcome of this process when a response is received.
14. Given the above, and the facts that:
- (a) Karam was a key VicPol and later AFP target;
- (b) it is apparently alleged that Karam and Gobbo were particularly close and that Gobbo obtained the bill of lading from Karam; and
- (c) as a result, it might be presumed that there would be a higher likelihood of Gobbo information regarding Karam being provided to VicPol, and then by VicPol to the AFP, than for other targets of Operations Inca, Bootham-Moko and Cardinia;

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the AFP does not anticipate that any information useful to the Royal Commission's Terms of Reference could be obtained other than has already been obtained from VicPol and/or the Commonwealth Director of Public Prosecutions.

15. That analysis further explains why the AFP is not inclined to provide copies of affidavits relied upon to obtain other warrants (and other similar documents) in Operations Inca or Bootham-Moko to the Royal Commission.
16. The AFP remains willing to consider requests for targeted searches for, and the provision of, documents, subject to PII claims by the AFP and/or Commonwealth statutory secrecy provisions, and subject to proper consideration of any adverse impact on current Court of Appeal proceedings. As noted above, the AFP is also willing to consider responding to specific questions from the Royal Commission, subject to these same caveats.
17. However, in the absence of a reason to consider that any information the AFP holds, and that is not otherwise being provided by VicPol, is likely to be relevant to the Royal Commission's Terms of Reference, the AFP will not at present provide further documents in response to either NP211 or NP276.

Please contact Pip Mitchell or Elizabeth Tan with any queries.

Yours sincerely



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