

POLICE FORCE AND DEPARTMENT, SUBMISSIONS TO ROYAL COMMISSION

1652. Hon DERRICK TOMLINSON to the minister representing the Minister for Police and Emergency Services:

- (1) Were any instructions issued to, or restrictions imposed upon, members of the Police Force or the Police Department about making submissions to the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers?
- (2) Was a protocol prepared instructing members of the Police Force and the Police Department on procedures to be followed if they intended to make submissions to the royal commission; and if yes, will the minister table a copy of that protocol?
- (3) Were any police officers or Police Department personnel disciplined because of information they gave or because of the way in which they conducted themselves with the royal commission investigators; and if yes, who, why and when?

Hon NICK GRIFFITHS replied:

I thank the member for some notice of this question. The Minister for Police and Emergency Services has provided the following response -

The Western Australian Police Service advises -

- (1) No.
- (2) The only guidelines issued by the Police Service related to the release of Police Service records to the commission. These guidelines were posted on the Police Service's Internet site. I seek leave to have the guidelines incorporated in *Hansard*.

Leave granted.

The following material was incorporated -

RECORDS ACCESS GUIDELINES

On occasion, sworn officers and Public Servants of the Western Australia Police Service (the Service) may wish to, or be compelled to, access or take possession of records of the Service, for the purpose of tendering those documents or making a submission to the Police Royal Commission, personally or through a legal representative.

Whilst not wishing to inhibit the ability of persons to prepare for appearance at, or make a submission to the Royal Commission, there needs to be adherence to formal guidelines to ensure individuals and the Service are not placed at Risk.

Procedural Directions have been set down by the Royal Commissioner, Hon Mr Geoffrey Kennedy AO QC, and published on the Royal Commission website, which require at Section 16 (b) that "*Counsel Assisting the Commission must be given adequate prior notification of any evidence intended to be placed before the Commission, and counsel representing the Police Service should also be given an advance copy of any of its records intended to be tendered*". Having regard to this, the general policy will be that where a member of the Service wishes to have an agency record tendered, that person will make a request of the Royal Commission to issue a Section 6 - Notice to Produce, which will compel production of that record to the Royal Commission for consideration of tendering.

Under no circumstances are records of the agency to be taken or copied for the purpose of tendering these to the Royal Commission, without prior approval of the Service. Additionally, no records or copies of records of the Service, which includes journals and diaries, are to be given into the custody of a third person, which includes a legal representative, without prior Service approval.

In determining whether a document can be accessed, copied or released to a third party (in whole or part), consideration must be given to a number of issues, including but not limited to the following:-

- Does the record include information provided by a third party, for which consent to further disseminate is required;
- Could release reveal and therefore compromise law enforcement methodology; Is information included (e.g.: telephone intercept or listening device product) that would create an offence through access, possession or dissemination contrary to legislative restriction;

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- Could informants or covert operatives be compromised or otherwise placed in danger; Are there FOI considerations;
- Is uncorroborated information contained within the record that could result in civil litigation if released (generally Information / Intelligence reports of the agency are based on presumption and can not be relied upon as evidence);
- Any other issue that impacts or releasing / providing access to the material (*e.g.: counsel representing the member at the Royal Commission may also be representing another person in respect to a criminal / civil matter*).

In respect to the above dot points, the owner area of the record will be consulted as to any submission they may wish to make in respect to the release of the record. Legal Services and Mr Richard HOOKER, Counsel representing the Commissioner of Police, will also be consulted.

All requests in relation to the above matters must in the first instance be made through the WAPS Royal Commission Unit, who will provide advice to the applicant as to the most appropriate procedure.

(3) No. However, by means of further information, the Police Service advised that in one instance it was intended to provide verbal guidance to an officer who was one of the informants involving an allegation of interference in a child abuse matter for providing a Police Service record - Operation Cathedral - to the officer's legal representatives without permission of the agency. An attempt was made to tender this document by the legal representative at the royal commission. However, the commission refused to take possession due to concerns about the legality of the legal representative having a Western Australia Police Service record in his possession and the relevance of that record. When informed that the officer's superiors needed to discuss the issue for the purpose of providing verbal guidance on document production procedure, the officer refused to accept the advice and the matter became the subject of allegations through the media that the Police Service was attempting to discipline a whistleblower.

In regard to a further matter, at the request of senior counsel and investigations of the royal commission, two officers were directed to discontinue all inquiries they were conducting into the Argyle matter, as their activities had the potential to compromise royal commission operations. At a later time, at the request of royal commission investigators, the two officers were directed to discontinue direct contact with the investigators. A conference was later arranged between counsel assisting and one of the officers at which it was decided the officer could make contact with the counsel assisting but not the investigators.