

COPY



Attorney General; Minister for Corrective Services

Our Ref: 35-11455
Your Ref: RAO2112008

Professor Robert Cunningham
28/11 McAlee Court
FREMANTLE WA 6160

Dear Professor Cunningham

Thank you for your letter dated 11 October 2010 and your statement which is attached. The matters in your letter and attachment (which have also been the subject of discussion at our meetings) have been noted and, in particular, the reference to *Cunningham and Atoms v Police (unreported)* 29 April 2010 (Fremantle Magistrates Court) involving yourself and your fiancé, Catherine Atoms; the reference to *Police v Robert Cunningham and Catherine Atoms* (29 April 2010) where Magistrate Lawrence accepted the defence submission of no case to answer, and the several questions you have raised. In relation to these matters, the following comments are provided.

First, as you will appreciate a number of your questions involve issues of law and the application of legal issues to particular fact and circumstances. For example, you ask: "When issuing a move on order to Catherine Atoms, did First Class Constable Peter Clark and First Class Constable Traynor comply with sections 27(3) and 27(7) of the Criminal Investigation Act?". This question, for example, involves issues of statutory interpretation. Such a question in turn depends upon the relevance of any pertinent case law on these or analogous statutory provisions, as well as the application of these matters to the precise facts and circumstances that are alleged to have occurred. Again, as I trust you will appreciate this is the normal and general situation with regard to such questions, including your questions 2, 3, 6, 7 and 9 and as Attorney General I am unable to provide you with a definitive response to the questions you have put.

Second, as you may be aware, neither I, as Attorney General, nor my Ministerial office or the WA Department of the Attorney General provides legal advice or assistance to private persons or organisations. Therefore, I am not in a position to respond to or answer your questions. I appreciate that you are a lawyer. However, you may consider it appropriate to seek independent legal advice regarding your questions and the legal options, procedures, and remedies that may be available to you.

Third, a number of your questions relate to specific and particular factual issues, events and circumstances. For example, your question 10 asks: "What happened to Dr. Mark Brophy's video footage of Sergeant Caldwell deploying a laser gun on Catherine Atoms and Robert Cunningham?". As Attorney General, I do not investigate or make decisions in regard to such factual matters. As several of your questions which involve such factual matters, including question 8, these may be

matters which you may wish to take up the WA Police, for example, by writing to WA Commissioner of Police or the WA Police Internal Affairs Unit.

Four, some of your questions, for example, questions 12 and 13, ask for the reasons which motivated alleged police conduct and action. Again, I am not in a position to ascertain such reasons and I would suggest that if wish to pursue these matters you might correspond with the organisations in point 3 above.

Fifth, your letter raises questions for the WA Department of the Attorney General to answer. The first question not only involves legal advice and legal issues but also the application of the law to particular alleged facts and circumstances. As indicated above, neither I nor the department provides answers to or advice on such issues to private persons or organisations. As you aware, there may be a number of legal options, procedures and remedies available in relation to statutory authorities and the exercise or non exercise of their statutory powers, functions and responsibilities. In relation to these matters, you may to obtain legal advice.

Sixth, you ask whether the WA Department of the Attorney General is "willing to provide the CCC with the requisite resources to engage in an original unilateral investigation of the matter?" There are two responses to your question. First, I understand that the Executive Director of the CCC has advised my office by telephone that the investigation concerning your complaint is still the subject of an on-going investigation. Consequently, it appears at this point in time at least it is not correct to assert the matter is not being investigated because of any contended lack of resources. The second response is that, in any event, as I trust you will appreciate, the funding of and resources provided to State Government departments and State agencies and statutory authorities is determined and allocated by specific budgetary procedures and processes. In addition, because the CCC is an independent statutory authority, it would as a general matter be inappropriate for the Department of the Attorney General to provide the CCC with funding in relation to a specific matter or investigation.

Finally, you ask whether the Department can provide you with "specific suggestions" as to how you may "seek a satisfactory resolution" of these matters. At least two suggestions have already been provided above as well as the indication, noted above, that the CCC is still investigating your complaint. In addition to those matters, you may wish to seek legal advice, for example, as to whether there may be any civil actions, procedures or remedies which may be available to you.

In view of the above, including your allegations relating to WA Police officers, I have forwarded a copy of your letter and attachment as well this reply to the WA Minister for Police the Hon Rob Johnson MLA.

Thank you for informing me of your views and concerns and I trust that the above is of assistance in explaining the position to you.

Yours sincerely



C. CHRISTIAN PORTER MLA
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

CC Hon Rob Johnson MLA, Minister for Police (together with letter of 11 October 2010 and attachment)

30 NOV 2010